

# FLAG PROTECTION AMENDMENT

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## HEARING BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTH CONGRESS FIRST SESSION

ON

**H.J. Res. 4**

MAY 7, 2003

**Serial No. 20**

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://www.house.gov/judiciary>

U.S. GOVERNMENT PRINTING OFFICE

86-952 PDF

WASHINGTON : 2003

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## FLAG PROTECTION AMENDMENT

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WEDNESDAY, MAY 7, 2003

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON THE CONSTITUTION,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 3:44 p.m., in Room 2141, Rayburn House Office Building, Hon. Steve Chabot (Chairman of the Subcommittee) presiding.

Mr. CHABOT. The committee will come to order. I first of all want to apologize for us not starting on time, but we had a whole series of votes on the floor. So even though I apologize, it was unavoidable and we have to be over there for those votes.

The Subcommittee is convened this afternoon to hear testimony regarding H.J. Res. 4, a proposed amendment to the Constitution authorizing Congress to prohibit the physical desecration of the American flag.

Today, the American—excuse me—today, the flag of the United States of America is probably the most recognized symbol of freedom and democracy in the world. Whether in small conflicts or world wars, whether atop the United States Capitol or simply hanging from a neighbor's porch, whether sewn to the sleeves of brave men and women sent into battle or draped across caskets as some of these brave servicemen and servicewomen are escorted home, the flag has always persevered and survived to represent the values that all Americans hold dear.

No one can forget the image of the New York City fire fighters raising the flag to the top of a pole in the midst of rubble and debris at ground zero where the World Trade Center towers once stood. It is this symbolism and resilience that has made the flag one of the most beloved and cherished symbols in our nation's history.

The movement to pass legislation prohibiting the desecration of the American flag began in the late 1800's, with all 50 States having flag desecration laws on the books by 1932. In 1968, the Federal Government passed its statute prohibiting such conduct. Thus, for over half a century, every single State in the Union, and later the Federal Government, outlawed this type of conduct without constitutional objection.

However, in 1989, so fairly recently, the United States Supreme Court in one fell swoop, and by the narrowest of margins in a five-four opinion, effectively invalidated all State and Federal laws that prohibited flag desecration. The Court concluded that the burning of an American flag as part of a political demonstration was ex-

pressive conduct, protected by the First Amendment. Congress responded to the Supreme Court's decision almost instantaneously, through bipartisan and overwhelming support, with the enactment of the Flag Protection Act of 1989. However, the following year, the Supreme Court again, in a five-to-four decision, held the Flag Protection Act unconstitutional in *United States v. Eichman*.

Because of these two narrowly-decided Supreme Court decisions effectively rejected the command of an overwhelming majority of the American people to outlaw such conduct, the only option remaining for the American public is to amend the Constitution in order to restore protection to this most hallowed and respected symbol of our nation's unity, solidarity, and strength.

Some would argue that this proposed amendment would erode First Amendment protections that all Americans enjoy. I disagree with this argument, as do the majority of Americans. The Flag Protection Amendment is consistent with the First Amendment while reflecting society's interest in maintaining the flag as a national symbol by protecting it from acts of physical desecration. There is absolutely nothing in the amendment proposed today that will prevent individuals from speaking out against the United States, its policy, its people, its flag, or anything that it represents. This amendment simply prohibits acts of physical desecration of the nation's most enduring and revered symbol, nothing more.

In conclusion, some have called our country the melting pot of the world. Our nation is unique in its diverse composition of ethnicity, race, religion, nationality, and language, all of which personify our citizenry. While we all may not share the same background, there is one unifying symbol in which we all take pride, our flag.

Through this amendment, we are protecting not just a piece of cloth, but rather a symbol that epitomizes this country and all for which it stands.

The Flag Protection Amendment has been supported by more than two-thirds of the House of Representatives on four separate occasions, and by more than just a simple majority of the Senate on a number of occasions. In addition, an overwhelming majority of Americans, nearly 80 percent, support the adoption of this amendment, with all 50 State legislatures having adopted resolutions calling on Congress to approve such an amendment and send it to the States for ratification. Such overwhelming support by the American people sends a clear message to Congress that we must adhere to the wishes of the people and adopt this proposal, this proposed amendment to the Constitution.

I will yield my time to the minority side, if there is an opening statement, or do you want to wait until Mr. Nadler comes, or—

Mr. SCOTT. Mr. Chairman, I would ask unanimous consent that the gentleman from New York, the Ranking Member, be allowed to make a statement when he arrives.

Mr. CHABOT. Without objection, we will allow him at an appropriate time to make an opening statement.

Would the gentleman from Virginia wish to make a statement of any sort other than that?

Mr. SCOTT. No, Mr. Chairman, other than welcome the witnesses and we will get into questions. I appreciate the opportunity to be here.

Mr. CHABOT. Thank you. Are there any on the majority side that would like to make an opening statement? Okay. If there's no others, we will at this time introduce our panel for this afternoon, and we have a very distinguished panel. What I would like to do is at this point yield to the gentleman from South Carolina, Mr. Janklow, the former Governor of South Carolina—

Mr. JANKLOW. No, Dakota—

Mr. CHABOT. Excuse me, South Dakota, to introduce one of our distinguished Members this afternoon.

Mr. JANKLOW. Thank you very, very much, Mr. Chairman, and thank you, Members of the Committee, and you, Mr. Chairman, for giving me this privilege to come before your committee, a committee of which I'm not a Member, for the purposes of making an introduction.

I'd like to introduce to this committee a friend of mine and a friend of South Dakota's and America's. He is a gentleman who served in the Republic of Vietnam as a United States Army Major, as a helicopter pilot, and I'm going to read rather than to speak extemporaneously. I'm going to read what was written about him.

Major Brady distinguished himself while serving in the Republic of Vietnam, commanding a UH1H ambulance helicopter. He volunteered to rescue wounded men from a site in enemy-held territory which was reported to be heavily guarded and to be blanketed by fog. To reach the site, he defied through heavy fog and smoke and hovered slowly around a valley trail, turning his ship sideways to blow away the fog with the backwash from his rotor blades. Despite the unchallenged, close-range enemy fire, he found the dangerously small site, where he successfully landed and evacuated two badly wounded South Vietnamese soldiers.

He was then called to another area, completely covered by dense fog, where American casualties lay only 50 meters from the enemy. Two aircraft had previously been shot down and others had made unsuccessful attempts to reach this site earlier in the day. With unmatched skill and extraordinary courage, Major Brady made four flights to this embattled landing zone and successfully rescued all of the wounded.

On his third mission of the day, Major Brady once again landed at a site surrounded by the enemy. A friendly ground force pinned down by enemy fire had been unable to reach and secure the landing zone. Although his aircraft had been badly damaged and the controls actually partially shot away during his initial entry into the area, he returned minutes later and rescued the remaining injured.

Shortly thereafter, obtaining a replacement aircraft, Major Brady was requested to land in an enemy mine field where a platoon of American soldiers was trapped. A mine detonated near his helicopter, wounding two crew members and damaging his ship. In spite of this, he managed to fly six severely injured patients to medical aid.

Throughout that day, Major Brady utilized three helicopters to evacuate a total of 51 seriously wounded men, many of whom

would have perished without prompt medical attention. Major Brady's bravery was in the highest tradition of the military service and reflects the great credit upon himself and the United States Army. The result of that action that day in Vietnam, Major Brady was awarded the Congressional Medal of Honor by this Congress and the people of the United States.

Mr. Chairman and Members of the Committee, now Major General Brady, retired, spends all of his time working to get an amendment passed to the U.S. Constitution that protects this flag, protects this flag under which these men fought and died, protects this flag which flew over the bases from which these men came and the country from which these came. But more than anything else, Major General Brady epitomizes what we in America call "the right stuff," a man who was willing to lay down his life, if necessary, to save other people.

Time magazine in a story about him, Mr. Chairman, reported that Major Brady and his unit were responsible for rescuing approximately 5,000 wounded American and allied soldiers during the Vietnam War.

It gives me a great deal of pleasure to present to this committee Major General Patrick Brady.

Mr. CHABOT. Thank you. General, it is an honor to have you here this afternoon. Before we get to your testimony, we are going to introduce the other members of the panel, and we appreciate that very much, Mr. Janklow, and it is certainly an honor to have you as one of our panel members this afternoon.

The gentleman from New York is recognized for the purpose of making an opening statement if he would like to do it at this time.

Mr. NADLER. I would, indeed. Thank you, Mr. Chairman. Here we go again with the annual Republican rite of spring, a proposed amendment to the Constitution and the Bill of Rights to restrict what it calls flag desecration. Why spring? Because the calendar tells us that Memorial Day will soon be upon us. June 14 is Flag Day, and then we have July 4. Members need to send out a press release extolling the need to "protect" the flag, as if the flag somehow needs Congress to protect it.

The flag is a symbol of a great nation and of the fundamental freedoms that have made this nation great. If the flags need protection at all, it is from Members of Congress who value the symbol more than the freedom that the flag represents.

People have rights in this country that supercede public opinion, even strongly held public opinion. If we do not preserve those rights, the flag will then have been desecrated far beyond the capability of any individual with a cigarette lighter. But we will go through this exercise anyway.

I wonder if I am the only Member of the Subcommittee who would be willing to simply read last year's debate into the record, allow any new Members to say their pieces, consider any amendments, and move on, since the debate doesn't change from year to year.

Let there be no doubt this amendment is aimed directly at unpopular ideas. Current Federal law says the preferred way to dispose of a tattered flag is to burn it, but there are those who would



criminalize the same act if it was done to express political disagreement.

Current Federal law, which is constitutionally void, also makes it misdemeanor to use the flag for advertising or on packaging. How many Members of Congress, used car dealers, fast food restaurants, and other seemingly legitimate individuals and enterprises have engaged in this act which our laws define as criminal desecration? If I recall, at the last Republican National Convention, probably the Democratic Convention, but I recall at the Republican Convention seeing people with flag-designed sandals, t-shirts, and even shorts. This amendment would presumably make that law constitutional once more. If ratified, I think there are more than a few people who will have to redesign their campaign materials to stay out of jail.

I am proud to welcome an officer of the Port Authority Police to our committee. No New Yorker who lived through that day, the days after, and the memorials we all attended could ever forget their service and how moving it was to see that flag. I am, however, getting a bit tired of that act of terrorist barbarism being used to justify a plethora of political causes. As the President has often remarked, the people who murdered 3,000 of my neighbors did so because they hated our free society. But to use that atrocity to justify a curtailment of our American freedoms strikes me as a desecration of their memory.

Similarly, many people marched against the war, objected to the political use of their loved ones' deaths to justify the war. For example, Rita Lasar became angry when the attacks were used to justify the war. Her brother died in the North Tower, refusing to leave his quadriplegic coworker whose son was a member of Rescue Squad 288 and who died in the Trade Center said, "He would not have wanted innocent people killed in his name." She was later arrested for her dissent against the war with Iraq.

So people who claim the right to speak for the dead of September 11 show a bit of modesty. I represent that community in Congress and I can tell you they do not all hold the same views on this issue. In fact, there is probably more opposition to this proposed amendment in my district than almost anywhere else in this country.

People have died for the nation and the rights which this flag so proudly represents. We should not start destroying the way of life for which they made the ultimate sacrifice.

Let me just add one comment that what I mean when I say that this amendment is aimed not really at destroying the flag or burning the flag, it is aimed at unpopular political opinions. No one would think, no one would think that if someone made a movie about World War II and showed actors playing Nazi soldiers burned an American flag, portraying what Nazi soldiers did during the war, no one would arrest those actors and say they did a terrible thing. But if someone in a demonstration against the policy of whoever the current Administration is burned an American flag, that is presumably what this amendment is aimed against.

So the real sin is not burning the flag. Burning the flag in a movie is okay. Burning the flag to express unpopular opinions should be made criminal, and that is what this amendment gets at.

The fact of the matter is, I will say one other thing. No one is burning flags. This amendment is aimed at a problem that doesn't exist. The problem may have existed 30 years ago when this amendment was first proposed, but I'm not aware of any incidents of flag desecration in the United States, maybe in Iraq, but not in the United States, in the last 20 or 30 years.

But the point is, people—the point is, people are entitled to their opinions. The flag represents freedom, and by passing an amendment to limit free speech, which is what this amendment is, we are going against the idea that the flag represents. The idea is more important than the piece of cloth. We should protect the ideas of the freedom this nation represents, the idea that the people who fought and died under that flag fought and died for. We should protect American freedoms and reject this amendment. Thank you, Mr. Chairman.

Mr. CHABOT. The gentleman's time is expired. I will continue to introduce the panel.

Our second witness this afternoon will be Lieutenant Antonio J. Scannella. Lieutenant Scannella is a Police Lieutenant with the Port Authority of New York and New Jersey, where he has been for the past 15 years. Lieutenant Scannella was extensively involved in the clean-up of the aftermath of the terrorist attacks of September 11, 2001, where all but three of the police officers in his squad perished in the attacks.

Lieutenant Scannella was involved in saving what is believed to be the only American flag flying outside the World Trade Center when the terrorists struck. Since that time, Lieutenant Scannella has escorted the flag to such major events as the World Series, the Super Bowl, the 2002 Olympics in Salt Lake City, numerous parades and civic and community gatherings across the country. We welcome you here this afternoon, Lieutenant.

Our third witness is Gary E. May. Mr. May is currently an Associate Professor of Social Work at the University of Southern Indiana and the Chairman of the Veterans Defending the Bill of Rights, an affiliate of the American Civil Liberties Union. Mr. May is a Vietnam veteran and has received numerous awards for service in Vietnam, including the Bronze Star with Combat V, Purple Heart with Star, Vietnam Campaign, Vietnam Service, and National Defense medals. He obtained his bachelor's degree with the University of Evansville and master's degree with the University of Tennessee and we welcome you here this afternoon, Mr. May.

Our final witness is Professor Richard D. Parker. Professor Parker is a Professor of Law at Harvard Law School where he has taught since 1979 and has focused his teachings and writings on constitutional law. He clerked for such notable American jurists as Circuit Court Judge Jay Skelly Wright and United States Supreme Court Justice Potter Stewart. Prior to joining the Harvard faculty, Professor Parker was an attorney for the Children's Defense Fund. He holds a bachelor's degree from Swarthmore College with high honors and a law degree from Harvard Magna Cum Laude. We welcome you this afternoon, Professor.

At this time, if I could just advise the panelists of our rules relative to testifying. Each Member will have 5 minutes. We actually have a lighting system up there. The red light—when the yellow

light comes on, it means you have got 1 minute to wrap it up. Then when the red light comes on, we appreciate you stopping very close to that point. We give a little leeway, but not a whole lot.

In any event, this hearing will be followed immediately by a mark-up of this, so if we get finished with this, we appreciate the committee sticking around.

General Brady, we again appreciate your being here this afternoon and we are anxious to hear your testimony.

**STATEMENT OF MAJOR GENERAL PATRICK H. BRADY, USA  
(RET.), CHAIRMAN OF THE BOARD, CITIZENS FLAG ALLIANCE**

Major BRADY. Thank you very much, sir. The Citizens Flag Alliance is a nonpartisan organization. We have one mission and one mission only, and that is to return to the American people the right to protect their flag.

In 1989, in response to a flag burning by a communist, the Supreme Court took that right away when they amended the Constitution by inserting flag burning in the Bill of Rights. We do not believe that the freedom to burn the American flag is a legacy of the freedoms bestowed upon us by Madison, Jefferson, Washington, and the other great architects of our Constitution.

President Lincoln said, "If the policy of the Government is to be irrevocably fixed by decisions of the Supreme Court, the people will have ceased to be their own rulers."

Many of us have raised our right hand and swore to protect the Constitution. We believe that Americans who place their right hand over their heart and recite the Pledge of Allegiance take that same oath. Both the pledge and the oath are taken in the presence of Old Glory to emphasize that our flag is the symbol of our Constitution. To say that it is just a piece of cloth is like saying that a wedding ring is just a piece of metal.

U.S. Representative Bill Pascrell said, "The Supreme Court made a mistake." He was right. Our Government made a mistake. The Court has interfered with our Constitution by calling flag burning speech, and we the people must carry out our oath and pledge to protect the Constitution and our right to rule by ensuring that the Court's decision is not irrevocably fixed.

Justice Hugo Black, who I am told is a First Amendment absolutist, highlighted the Court's error when he said, "It passes my belief that anything in the Federal Constitution bars making the deliberate burning of the American flag an offense."

So the necessity and the legitimacy of our cause is beyond doubt, and so is the support. The legislatures of all 50 States support us, as do three out of four Americans and 70 percent of this great body.

But it's important to note that flag burners are not our primary concern. We will always have flag burners, as we will always have Americans who hate America. The problem is those who call flag burning speech. That is a distortion of our sacred Constitution and it must not be allowed.

Burning the American flag is not speech. Speech is the persuading power that moves people to the ballot box, and those elected to the will of the people. Flag burning is the persuading power of the mobs. It is certainly cowardice, even terrorism, to take one's

venom out on helpless individuals or objects who cannot defend themselves, and it is moral cowardice for us to ignore such acts.

Listen to Americans on this. Tommy Lasorda spoke for the uncommon common Americans when he said, "Speech is when you talk." General Norman Schwarzkopf spoke for our warriors when he said, "I regard the legal protection of our flag as an absolute necessity and a matter of critical importance to our nation."

We have heard from our opponents that the flag that our troops fight for, that our troops actually fight for the rights of flag burners. Now, who among them would stand before these men and women and tell them they are fighting in the sandstorms of Iraq so that their flag can be burned on the street corners of America? I am not to say that to my daughter, who is over there.

U.S. Representative John Murtha spoke for the House when he said, "Burning the flag is not speech. It is an act, an act that inflicts insult, insult that strikes at the very core of who we are as Americans. Flag burning is not speech."

Now, we have been diligent in addressing the concerns of those who support flag burning as speech, yet we wonder why they fear the democratic process, why they refuse to allow the American people to decide.

When they say the flag amendment would amend the Bill of Rights for the first time, we ask, if the Supreme Court in 1989 had voted to protect the flag, would they then have amended the Bill of Rights?

To those who have difficulty defining an American flag and express concern over prosecuting people who burn bikinis or lamp shades or toilet paper marked with the flag, we ask them simply, "would they put toilet paper or a bikini on the coffin of a veteran or on their own coffin?"

For those who say the flag is precious to them, we ask if they have anything that they love, that is precious to them, that they would not protect. Of all the precious symbols in America, only the flag, the most precious of all, is not protected.

Now, if they fear a tyranny of the majority, that the majority may exercise their will over a more virtuous minority, we ask if the minority on the Supreme Court who would have protected the flag was more virtuous than the majority who would not, or if the minority that would have elected their opponent was more virtuous than the majority that elected them.

But legalized burning of the flag goes beyond desecration of our Constitution. It also desecrates our values as a nation. Burning the flag is wrong, but what it teaches is worse. It teaches our children that the outrageous conduct of a minority is more important than the will of a majority. It teaches that our laws need not reflect our values and it teaches disrespect, disrespect for the values embedded in our Constitution, as embodied by our flag.

We are amazed that so many in Congress who support flag burning expressed outrage over the decision on the pledge. Why is saying "under God" in the pledge an establishment of religion and flag burning speech? Both are wrong.

The Court has also said cross burning is protected speech unless done to intimidate. I wonder if there is ever an example of cross burning not done to intimidate. One Justice got it right when he

said cross burning has nothing to do with the First Amendment, and neither does flag burning.

The Constitution is too important to be left to the courts, and so is the flag. They both belong to the people and it is time for this body to let the people decide. There are great and gifted Americans on both sides of this issue and learned opinions, but only one fact. The American people want their right to protect the flag returned. Whatever concerns some may have, I pray that they will muster the courage to believe that just this once, they may be wrong and the American public may be right.

Thank you very much, sir.

Mr. CHABOT. Thank you very much, General. You went a little over, but I am not going to interrupt a Congressional Medal of Honor winner— [Laughter.]

—so that is why we gave you a little extra time. Mr. May, we will give you a little extra time, as well. [Applause.]

[The prepared statement of General Brady follows:]

#### PREPARED STATEMENT OF MAJOR GENERAL PATRICK H. BRADY

My name is Pat Brady. I am the Chairman of the Board of the Citizens Flag Alliance. We are a coalition of some 140 organizations representing every element of our culture, some 20 million souls. We are non partisan and have one mission and one mission only: to return to the people the right to protect their flag.

In 1989, in response to a flag burning by a communist, the Supreme court amended the Constitution by inserting flag burning in the Bill of Rights. That decision took away a fundamental right of the American people, a right we possessed since our birth as a nation, a right affirmed by the Author of the Bill of Rights, James Madison, a right defended by Thomas Jefferson, a right reaffirmed by justices on every court and every Chief Justice of the United States that addressed the flag in the last century.

We do not believe that the freedom to burn the American flag is a legacy of the freedoms bestowed upon us by Madison and Jefferson and Washington and the other architects of our Constitution. And to distort the work of these great men unable to defend themselves, to put flag burning side by side with pornography as protected speech is outrageous.

President Lincoln said: "If the policy of the government . . . is to be irrevocably fixed by decisions of the Supreme court . . . the people will have ceased to be their own rulers". He also warned: "Don't interfere with anything in the Constitution. That must be maintained, for it is the only safeguard of our liberties."

Many of us have raised our right hand and swore to protect and defend the Constitution. We believe that Americans who place their right hand over their heart and recited the pledge of allegiance, take that same oath. Both the pledge and the oath are taken in the presence of Old Glory to emphasize that our flag is the symbol of our Constitution.

U.S. Representative Bill Pascrell said: "The Supreme court made a mistake, is not absolute and we should never kow-tow to any other branch of government regardless of their decision". He was right. The Court has interfered with our Constitution by calling flag burning speech and we the people must fulfill our oath and pledge, and our right to rule, by insuring that the Court's decision is not irrevocable fixed.

Justice Hugo Black, a First Amendment absolutists, spoke for our cause and every Supreme Court save one in the last century, when he said: "It passes my belief that anything in the Federal Constitution bars . . . making the deliberate burning of the American flag an offense".

So the necessity and legitimacy of our cause is beyond doubt, and so is the support. The legislatures of all 50 states support this cause as do three of four Americans and some 70% of this great body.

But it is important to note that flag burners are not our primary concern. We will always have flag burners as we will always have Americans who hate America. Rather, the problem is those who call flag burning speech. That is a distortion of our sacred Constitution and must not be allowed.

Burning the American flag is not speech.

Speech is the persuading power that moves people to the ballot box, and those elected to the will of the people. Flag burning is the persuading power of the mobs.

One should not be allowed to substitute hateful, violent acts, for rational, reasonable speech, to be heard.

That is the last resort of those who cannot properly articulate their cause but seek power at any cost. It is certainly cowardice, and terrorism, to take ones venom out on helpless individuals or objects who cannot defend themselves. And it is moral cowardice to ignore such acts.

Listen to Americans on this.

Tommy Lasorda spoke for the uncommon common American when he said, "speech is when you talk".

General Norman Schwarzkopf spoke for our warriors when he said: "I regard the legal protection of our flag as an absolute necessity and a matter of critical importance to our nation".

We have heard from opponents of the flag that our troops fight for the rights of flag burners. Who among them would stand before these men and women and tell them they are fighting in the sand storms of Iraq so that their flag can be burned on the streets of America?

Walter Berns, "The First Amendment protects freedom of speech, not expression, and, whereas all speech may be expression of a sort, not all expression is speech, and there is a good reason why the framers of the First Amendment protected one and not the other."

US Rep John Murtha said: "Burning and destruction of the flag is not speech. It is an act. An act that inflicts insult—insult that strikes at the very core of who we are as Americans and why so many of us fought, and many died, for this country."

Paul Greensburg, Pulitzer Prize winning journalists said: "... setting a flag afire is no more speech than vandalizing a cemetery, or scrawling slogans on a church or synagogue, or spray painting a national monument—all of which are acts properly forbidden by the laws of a civilized country."

We have been diligent in addressing the concerns of those who support flag burning as speech.

When they say the flag amendment would amend the Bill of Rights, we ask, if the Supreme court in 1989 had voted to protect the flag, would they then have amended the Bill of Rights?

To those who say the flag can be protected by statute, we agree but only after an amendment. The Supreme Court has made it clear that no statute alone will work.

To those who have difficulty defining the American flag and express concern over prosecuting people who burn bikinis embroidered with the flag or toilet paper marked with the flag, we ask if they would put toilet paper or a bikini on the coffin of a veteran, or their own coffin.

To those who say the flag is precious to them we ask if they have anything that they love or is precious to them that they would not protect. Of all the precious symbols in America, only the flag, the most precious of all is not protected.

If they fear a tyranny of the majority, that the majority may exercise their will on a more virtuous minority, we ask if the minority on the Court, who would have protected the flag was more virtuous than the majority who would not. Or if the minority that would have elected their opponent was more virtuous than the majority that elected them.

But legalized flag burning goes beyond desecration of our constitution, it also desecrates our values as a nation. Burning the flag is wrong but what it teaches is worse, it teaches that the outrageous conduct of a minority is more important than the will of the majority; it teaches that our laws need not reflect our values; and it teaches disrespect, disrespect for the values embedded in our Constitution as embodied by our flag.

We are convinced that our laws should reflect our values. Where in the Constitution does it say that toleration for conduct that the majority sees as evil is necessary for our freedom? Toleration for evil will fill our society with evil. Even those who oppose a flag amendment profess to be offended by flag desecration. Why tolerate it? What possible connection does toleration of evil have to the Constitution and our freedom?

We are amazed that so many in the Congress who support flag burning expressed outrage over the decision on the pledge. Why is saying under God in the pledge an establishment of religion and flag burning speech? Both are wrong. The courts distortions of the First Amendment have given us pornography, would deny our children the right to pray, to say the pledge, make it legal to burn the flag but illegal to burn your draft card, or your money or your mail box, or a tag on your mattress box. Who can make sense out of it? Only the people.

The court has also said cross burning is protected speech unless done to intimidate. I wonder if there was ever an example of cross burning not done to intimidate?

Only one justice got it right, he said cross burning has nothing to do with the First Amendment. Burning a cross is unlike burning any other symbol in our society and not intended to communicate anything other than fear and hatred. The same is true of flag burning, which is also unlike any other symbol in our society, it is the physical embodiment of the values embedded in our Constitution.

The Constitution is too important to be left to the Courts and so is the flag. They both belong to the people and it is time for this body to let the people decide.

There are great and gifted Americans on both sides of this issue. And learned opinions, but only one fact—the American people want their right to protect the flag returned. Whatever concerns some may have, I pray they will muster the courage to believe that this once they may be wrong, and the American public may be right. I hope they will have the compassion to defer to those great blood donors to our freedom many whose final earthly embrace was in the folds of Old Glory.

Mr. CHABOT. Lieutenant Scannella, you are recognized for 5 minutes.

**STATEMENT OF LIEUTENANT ANTONIO J. SCANNELLA,  
PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

Lieutenant SCANNELLA. I am a man of few words, but I will do my best to express why I feel that the desecration of the American flag is not just someone expressing their constitutional right to freedom of speech.

I have been a police officer for the Port Authority for 15 years. On September 11, 2001, all but three of the police officers in my squad were killed in the attack on the World Trade Center. These were my friends. I worked with them every day for many years. I would have family barbecues at my home. I knew their wives. I knew their children.

In the months that followed, I worked countless hours at ground zero in the worst of conditions, and I saw things that men and women should never see. I helped carry the body of one of my dearest friends. We found his decomposed body months after he was killed by the collapse of the South Tower. To this day, the men and women who survived the attack all suffer from some degree of permanent mental and emotional scarring.

You are all familiar with the torn flag that was recovered from the World Trade Center. This flag flew out in front of the World Trade Center on the morning of the attack and was the only American flag flying there that morning. This flag was recovered from the rubble 3 days after the attack. The National Guard that recovered the flag had intended to burn it in order to dispose of it properly. My partner, Officer Curt Kellinger, was made aware of this flag. He and I felt and insisted that we would not let the flag be burned because it meant too much to us and the friends that we lost. The National Guard respected our request and gave us the flag back.

We decided that we would display this flag at the memorial service for Officer Donald McIntyre. With the help of the local fire department, we displayed the flag by flying it off an arch that was formed by the ladders of two fire trucks. We had brought the flag to this memorial service to honor Donny, and we did.

But then we started to realize that this flag was much more meaningful than that. At the memorial service, everyone was gazing at the flag. This flag meant a lot of things to everyone that saw it that day. This flag had the same meaning that the flag that we sing about in our national anthem, “The bombs bursting in air gave

proof through the night that our flag was still there.” We started taking the flag to as many funerals as we could. We wanted everyone to see that our American flag had survived.

We eventually took the flag to the World Series in New York. It flew there for all three games in our city. It is hard to describe or comprehend the emotion and reverence displayed in New York at those games. This flag was also prominently displayed at the Super Bowl and both the Veterans’ Day and the Thanksgiving Day parade in New York City.

I hope most of you here watched the opening ceremonies of the Olympics in Salt Lake City. If you did, then you all witnessed how powerful and meaningful a cloth can be. This flag meant a lot of things to everyone that saw it that day. This flag represents that our country was attacked, our friends and fellow Americans were brutally killed, but our country was still united by the symbol.

Desecration of the American flag is not someone’s freedom of speech. It is done to insult, aggravate, and anger Americans. Any other act that is this offensive is illegal. Most importantly, it is disrespectful to the men and women that have died to give us the freedom that we love and have. Thank you.

Mr. CHABOT. Thank you very much, Lieutenant. We appreciate it. [Applause.]

[The prepared statement of Lieutenant Scannella follows:]

PREPARED STATEMENT OF LIEUTENANT ANTONIO SCANNELLA

I am a man of few words but I will do my best today to express why I feel that the desecration of the American flag is not someone exercising their Constitutional right to freedom of speech.

I have been a police officer for the Port Authority of New York for 15 years. During that time, I have risen to the rank of lieutenant. On September 11, 2001, all but three of the police officers in my squad were killed in the terrorist attacks on the World Trade Center. Those killed were friends that I had worked with every day for many years. I knew their spouses and children. We were all a great big family.

In the months that followed September 11th, I worked countless hours in the worst of conditions in the heap of rubble and utter destruction that came to be known as Ground Zero. I saw things that no man or woman should ever have to see. I helped carry out what remained of the lifeless body of one of my closest and dearest friends, found months after he was killed by the collapse of the South Tower. To this day, the men and women who survived the attack all suffer from some degree of permanent mental and emotional scarring.

One of the moments that helped keep all of us workers going in the midst of such chaos was the finding of an American flag in the rubble. I am sure you are all familiar with the torn flag that was recovered from the World Trade Center. This flag was believed to have been the only American flag that was flying in front of the World Trade Center on the morning of the attack. The flag was found in the rubble and debris by National Guardsmen. The finding of the flag strengthened the resolve of the workers at Ground Zero, and I believe the nation as a whole. It was the survival of this flag that came to symbolize the strength and resilience that represents the character of our country. A man does a lot of thinking in such circumstances, and I can honestly say that I have never felt prouder to be an American. The comfort and reassurance that this worn and tattered flag has brought, not only to me but to millions of Americans, is unmatched and irreplaceable. No other symbol or object could have done so much for so many in such circumstances.

The National Guardsmen who found the flag had intended to burn it in order to dispose of it properly. My partner, Officer Curt Kellinger, was made aware of this flag. He and I felt very strongly about this great symbol and agreed that we would not let this flag be burned because it meant too much to us, the friends that we lost, our city that had suffered, and the nation as a whole. The National Guard respected our request and gave us the flag.



We decided that we would display the flag at the memorial service for Officer Donald McIntyre. With the help of the local fire department, we displayed the flag by hanging it off an arch that was formed by the ladders of two fire trucks. We brought the flag to this particular memorial service to HONOR Donny and we did, but I began to realize that this flag was much more meaningful than that. At the memorial service everyone was gazing at the flag. This flag meant a lot of things to everyone that saw it that day. This flag had the same meaning as the flag that we sing about in our national anthem, "THE BOMBS BURSTING IN AIR GAVE PROOF THROUGH THE NIGHT THAT OUR FLAG WAS STILL THERE." We started taking the flag to as many funerals as we could. I wanted everyone to see that our American flag had survived.

We eventually took the flag to the World Series in New York, where it flew for all three games in our city. It is hard to describe or comprehend the emotion and reverence displayed in New York at that games. The flag was also prominently displayed at the Super Bowl and at the Veterans Day Parade in New York City, as well small community gatherings and civic clubs.

I hope most of you here today watched the opening ceremony of the Olympics in Salt Lake City. If you did, then you all witnessed how powerful and meaningful a flag can be. The American flag is more than just a piece of cloth—it is a national asset, the likes of which should not be defiled. This flag in particular meant a lot of things to everyone that saw it that day. This flag represented that our country was attacked, our friends, family and fellow Americans were brutally killed, but our country was still alive and kicking, united by this symbol.

I am here today not as a political hack or a crusader with a cause. Rather, I am here today as a humble American citizen asking that Congress give protection to a national treasure that was once rightly protected—an object that serves as the common bond for people of all backgrounds. The flag is an integral piece of our country's fabric, sort of like the Grand Canyon or the Washington Monument, neither of which could be defiled without serious penalties. All I am asking is that our national symbol, the American flag, be given similar treatment. It is the least we can do for our family, our country, and those who have given the ultimate sacrifice—their lives—to serve and protect it. Thank you for allowing me to testify here today and I will be glad to answer any questions that you may have.

Mr. CHABOT. Mr. May, you are recognized for 5 minutes.

**STATEMENT OF GARY E. MAY, ASSOCIATE PROFESSOR OF SOCIAL WORK, UNIVERSITY OF SOUTHERN INDIANA, EVANSVILLE, IN, ON BEHALF OF VETERANS DEFENDING THE BILL OF RIGHTS**

Mr. MAY. Good afternoon. I am extremely flattered and humbled by your invitation and interest in listening to my thoughts about the proposed amendment to the Constitution. I gladly accepted the invitation as yet another opportunity for me to be of service to my country.

As a Vietnam veteran who lives daily with the consequences of my service to my country, and as the son of a World War II combat veteran and the grandson of a World War I combat veteran, I can attest to the fact that not all veterans, indeed, perhaps most veterans, do not wish to exchange fought-for freedoms for protecting a tangible symbol of those freedoms. I oppose this amendment because it does not support freedom of expression and the right to dissent.

I joined the U.S. Marine Corps while still in high school in 1967. This was a time of broadening public dissent and demonstration against our involvement in Vietnam. I joined the Marines, these protests notwithstanding, because I felt it was my duty to do so. I felt duty-bound to answer President Kennedy's challenge to "ask not what your country can do for you, ask what you can do for your country." My country was asking me to serve in Vietnam, osten-

sibly because people there were being arbitrarily denied the freedoms we enjoy as Americans.

During my service with K Company, 3rd Battalion, 27th Marines following the Tet offensive of 1968 in Vietnam, I sustained bilateral above-the-knee amputations as a result of a land mine explosion on April 12, 1968. My military awards have already been cited. Now, over 35 years after I lost my legs in combat, I am again called upon to defend the freedoms that my sacrifices in combat were said to preserve.

It has been a long 35-plus years. I have faced the vexing challenge of reconciling myself with the reality of my military history and the lessons I have learned from it and the popular portrayal of veterans as one-dimensional patriots whose patriotism must take the form of intolerance, narrow-mindedness, euphemisms, and reductionism, where death in combat is referred to as "making the ultimate sacrifice," and the motivation for service and the definition of true patriotism is reduced to dedication to a piece of cloth.

Three or 4 years ago, near the anniversary of my injuries in Vietnam, I had a conversation with a colleague at the university. I mentioned the anniversary of my injuries to her and asked her what she was doing in 1968. Somewhat reluctantly, she said, "I was protesting the war in Vietnam." I was not offended. After all, our nation was born out of political dissent. Preservation of freedom of dissent, even if it means using revered icons of this democracy, is what helps me understand losing my legs.

The strength of our nation is found in its diversity. This strength was achieved through the exercise of our First Amendment right to freedom of expression, no matter how repugnant or offensive the expression might be. Achieving that strength has not been easy. It has been a struggle, a struggle lived by some very important men in my life and me.

In addition to my own military combat experience, I have been involved in veterans' affairs as a clinical social worker, program manager, board member, and advocate since 1974. I have yet to hear a veteran I have lived or worked with say that his or her service and sacrifice was in pursuit of protecting the flag. When confronted with the horrific demands of combat, most of us who are honest say we fought to stay alive. In my opinion, putting the pretty face of protecting the flag on the unforgettable, unspeakable abominations of combat seems to trivialize what my fellow veterans and I experienced. This depiction is particularly problematic in light of the current events in Iraq.

I am offended when I see the flag burned or treated disrespectfully. As offensive and painful as it is, I still believe that those dissenting voices need to be heard. The powerful anger that is elicited at the sight of flag burning is a measure of the love and reverence most of us have for the flag.

However, the pride and honor we feel is not in the flag per se. It is in the principles that it stands for and the people who have defended them. Prohibiting this powerful symbolic discourse would stifle legitimate political dissent. If it is to be truly representative of our cherished freedoms, the flag itself must be available as a vehicle to express these freedoms.

This country is unique and special because the minority, the popular, the dissenters, and the downtrodden also have a voice and are allowed to be heard in whatever way they choose to express themselves that does not harm others. Supporting freedom of expression, even when it hurts, is the truest test of our dedication to the belief that we have that right.

Freedom of speech and expression, especially the right to dissent with the policies of the Government, are a cornerstone of our form of Government. Throughout our history, these freedoms have greatly enhanced the stability, prosperity, and strength of our country. These freedoms are under serious attack today. The smothering, oppressive responses to publicly expressed misgivings about our incursion into Iraq and ad hominem attacks against those who dare to express them are alarming. Supporting our troops does not mean suspending critical analysis and muffling public debate and discourse.

If we are truly serious about supporting our troops and honoring the sacrifices of our military veterans, our efforts and attention would be better spent in understanding the full impact of military service and extending services to the survivors and their families. Our record of service to veterans of all wars is not exemplary.

In May 1932, in the midst of the great depression, World War I veterans had to march on this Capitol to obtain their promised bonuses. World War II veterans were unknowingly exposed to radiation during atomic testing. Korean veterans, perhaps more than any living U.S. veterans, have been forgotten. Vietnam veterans are still battling to obtain needed treatment for their exposure to life-threatening herbicides and withheld support upon their return. Veterans from Gulf War I still have unanswered questions about what is popularly known as Gulf War syndrome. The list goes on.

The spotty record in veterans' services is more shameful when one considers that the impact of military service on one's family has gone mostly unnoticed by policy makers. Is our collective interest better served by amending the Constitution to protect a piece of cloth than by helping spouses understand and cope with the consequences of their loved ones' horrible and still very real combat experiences? Are we to turn our backs on the needs of children whose lives have been affected by their parents' military service? The Agent Orange Benefits Act of 1996 was a good start, but we shouldn't stop there. Is our obligation to protect the flag greater, more righteous, more just, or more moral than our obligation to help veterans and their families? I think not.

I have a great deal of pride and admiration for our country, its people, and its fundamental principles. I am grateful for the many heroes of our country and especially those in my family. I believe that all the sacrifices of those who went before me would be for naught if an amendment were added to the Constitution that cut back on our First Amendment rights for the first time in the history of our great nation.

Please listen to these perspectives of ordinary veterans who know first-hand the implications of tyranny and denied freedoms. Our service is not honored by this onerous encroachment on constitutionally guaranteed freedoms. Protecting the flag is no substitute for provision of services and supports. Thank you very much.

Mr. CHABOT. Thank you.  
[The prepared statement of Mr. May follows:]

PREPARED STATEMENT OF GARY E. MAY

Good morning. I am extremely flattered and humbled by your invitation and interest in listening to my thoughts about the proposed amendment to the Constitution. I gladly accepted the invitation as yet another opportunity for me to be of service to my country.

As a Vietnam veteran who lives daily with the consequences of my service to my country, and as the son of a WWII combat veteran, and the grandson of a WWI combat veteran, I can attest to the fact that not all veterans, indeed perhaps most veterans, do not wish to exchange fought-for freedoms for protecting a tangible symbol of these freedoms. I oppose this amendment because it does not support the freedom of expression and the right to dissent.

This is among the core principles under our Constitution that my family and I served to support and defend. It would be the ultimate irony for us to place ourselves in harm's way and for my family to sacrifice to gain freedom for other nations and not to protect our freedom here at home.

My late father in law, Robert E. Speer, endured horrible, prolonged combat as a member of Merrill's Marauders. My older brother, Edward C. May, saw duty with the Army in Korea during the Vietnam era.

I barely knew my grandfather who died when I was young. I do know that he saw combat while serving in the Army during WWI. His service included his being gassed. He never received any government benefits. My father didn't know all of the details of his father's service, but he has no recall of grandpa referring to the flag as a reason for his service and sacrifice. After the war, he returned to his Winslow, Indiana home and worked to provide for his family.

My Father, Charles W. May, who died nearly a year ago, was a WWII Army combat veteran who served in the European Theater of Operations from 1944 to 1946. He saw combat with Battery "B" 500th Armored Field Artillery Battalion, 14th Armored Division. The flag or its protection was not a powerful motivating force for himself or any of his fellow combatants. It was the fight for freedom that really mattered.

I joined the U.S. Marine Corps while still in high school in 1967. This was a time of broadening public dissent and demonstration against our involvement in Vietnam. I joined the Marines, these protests notwithstanding, because I felt that it was my duty to do so. I felt duty-bound to answer President Kennedy's challenge to "ask not what your country can do for you; ask what you can do for your country." My country was asking me to serve in Vietnam, ostensibly because people there were being arbitrarily denied the freedoms we enjoy as Americans.

During my service with K Company, 3rd Battalion, 27th Marines following the Tet Offensive of 1968 in Vietnam, I sustained bilateral above the knee amputations as a result of a landmine explosion on April 12, 1968. My military awards include the Bronze Star, with combat "V", Purple Heart, with star, Vietnam Campaign, Vietnam Service, and National Defense medals.

While serving in Vietnam, I never once heard one of my fellow Marines say they were there protecting the flag. Frankly, most of us didn't know why we were there, but we knew it was important to do what was necessary to stay alive. Additionally, most of us there were the sons of WWII veterans whose decisions to serve were influenced by family traditions and a sense of what was right and expected of citizens.

Upon my return from Vietnam, I enrolled at the University of Evansville where there were occasional student protests of the war. I felt a strong identity with these protesters, because I too, felt that the war was wrong and that that feeling demanded expression-after all, this is what I had served to protect.

I graduated with a Bachelor of Arts in Sociology. I earned my Master of Science in Social Work degree from the University of Tennessee in 1974. I am married to the former Peggy Speer of Haubstadt, Indiana. We have two children, Andrea, a middle school teacher in Indianapolis, and Alex, a supermarket manager.

Now, over 35 years after I lost my legs in combat, I am again called upon to defend the freedoms which my sacrifices in combat were said to preserve. It's been a long 35+ years. I have faced the vexing challenge of reconciling myself with the reality of my military history and the lessons I have learned from it and the popular portrayal of veterans as one dimensional patriots, whose patriotism MUST take the form of intolerance, narrow-mindedness, euphemisms, and reductionism-where death in combat is referred to as "making the ultimate sacrifice" and the motivation for service and the definition of true patriotism is reduced to dedication to a piece of cloth.

A few years ago, near the anniversary of my injuries in Vietnam, I had a conversation with a colleague at the University. I mentioned the anniversary of my wounding to her and asked her what she was doing in 1968. Somewhat reluctantly, she said, "I was protesting the war in Vietnam." I was not offended. After all, our nation was born out of political dissent. Preservation of the freedom to dissent, even if it means using revered icons of this democracy, is what helps me understand losing my legs.

The strength of our nation is found in its diversity. This strength was achieved through the exercise of our First Amendment right to freedom of expression—no matter how repugnant or offensive the expression might be. Achieving that strength has not been easy—it's been a struggle, a struggle lived by some very important men in my life and me.

In addition to my own military combat experience, I have been involved in veterans' affairs as a clinical social worker, program manager, board member, and advocate since 1974. I have yet to hear a veteran I have lived or worked with say that his/her service and sacrifice was in pursuit of protecting the flag. When confronted with the horrific demands of combat, most of us who are honest say we fought to stay alive. Combatants do not return home awestruck by the flag. Putting the pretty face of protecting the flag on the unforgettable, unspeakable, abominations of combat seems to trivialize what my fellow veterans and I experienced. This depiction is particularly problematic in light of the current events in Iraq.

I am offended when I see the flag burned or treated disrespectfully. As offensive and painful as this is, I still believe that those dissenting voices need to be heard. This country is unique and special because the minority, the unpopular, the dissenters and the downtrodden, also have a voice and are allowed to be heard in whatever way they choose to express themselves that does not harm others. Supporting freedom of expression, even when it hurts, is the truest test of our dedication to the belief that we have that right.

Free expression, especially the right to dissent with the policies of the government, is one important element, if not the cornerstone of our form of government that has greatly enhanced its stability, prosperity, and strength of our country. This freedom of expression is under serious attack today. The smothering, oppressive responses to publicly expressed misgivings about our incursion into Iraq and ad hominem attacks against those who dare to express them are alarming. "Supporting our troops" does not mean suspending critical analysis and muffling public debate and discourse.

Freedom is what makes the United States of America strong and great, and freedom, including the right to dissent, is what has kept our democracy going for more than 200 years. And it is freedom that will continue to keep it strong for my children and the children of all the people like my father, late father in law, grandfather, brother, me, and others like us who served honorably and proudly for freedom.

The pride and honor we feel is not in the flag per se. It's in the principles that it stands for and the people who have defended them. My pride and admiration is in our country, its people and its fundamental principles. I am grateful for the many heroes of our country—and especially those in my family. All the sacrifices of those who went before me would be for naught, if an amendment were added to the Constitution that cut back on our First Amendment rights for the first time in the history of our great nation.

I love this country, its people and what it stands for. The last thing I want to give the future generations are fewer rights than I was privileged to have. My family and I served and fought for others to have such freedoms and I am opposed to any actions which would restrict my children and their children from having the same freedoms I enjoy.

The proposed amendment will apparently prohibit yet to be defined abuses of the flag which are deemed offensive. Who shall write the definition? Will destroying the flag in the interest of registering strong objection to a military excursion violate the law? What about reducing this revered icon to a lamp shade? Would the inclusion of a flag in a wall hanging violate the law? What if used as a curtain? Who decides?

If one peruses the pages of the periodicals of the traditional veterans' organizations, many of which apparently support this amendment, one will observe many uses of this revered symbol. Do those who object to a flag motif in clothing have recourse under the proposed amendment? If the flag can be worn on the uniform shoulder by safety and law enforcement personnel, is it permissible for it to be worn on underclothing? Who will check?

The proposal seems unenforceable. It raises the specter of the "flag police," whose duties would include searching out violations and bringing offenders to the bar of

justice. That this is defended in the name of freedom and in the memory of valiant sacrifices by millions of this country's veterans is duplicitous and cynical.

If we are truly serious about honoring the sacrifices of our military veterans, our efforts and attention would be better spent in understanding the full impact of military service and extending services to the survivors and their families. Our record of service to veterans of all wars is not exemplary. In May 1932, in the midst of the Great Depression, WWI veterans had to march on this Capitol to obtain their promised bonuses. WWII veterans were unknowingly exposed to radiation during atomic testing. Korean veterans, perhaps more than any living U.S. veterans, have been forgotten. Vietnam veterans are still battling to obtain needed treatment for their exposure to life-threatening herbicides and withheld support upon their return. In my area, businesses and churches are soliciting donations to support the families of U.S. troops in Iraq. The list goes on . . .

The spotty record in veterans services is more shameful when one considers that the impact of military service on one's family has gone mostly unnoticed by policy makers. The dimensions of this impact and the efficacious responses of funded programs nationwide are chronicled in *The Legacy of Vietnam Veterans and Their Families, Survivors of War: Catalysts for Change* (1995. Rhoades, D.K., Leaveck, M.R. & Hudson, J.C., eds. Agent Orange Class Assistance Program. Government Printing Office). In this volume, Congressman Lane Evans opines that:

"Although the government's legal obligation extends primarily to veterans, I believe the government also has a strong moral obligation to provide services to those family members who are affected by the veteran's experiences. Services should be offered to children with congenital disorders whose conditions are related to their parent's military service. Counseling should be offered to the family members of veterans with psychological or substance abuse problems related to their military service. By providing appropriate services and benefits, through either government or community-based organizations, the government would admit its responsibility and offer the assistance that some veterans and their families desperately need." (p. ix)

The programs which were supported by the Agent Orange Class Assistance Program were later represented by Veterans Families of America, an organization whose member agencies demonstrated effectiveness in meeting veteran family needs, but whose continuation was ended due to lack of funding. I proudly served as a member of the board of Veterans Families of America.

Is our collective interest better served by amending the Constitution to protect a piece of cloth than by helping spouses understand and cope with the consequences of their loved ones' horrible and still very real combat experiences? Are we to turn our backs on the needs of children whose lives have been affected by their parents' military service? The Agent Orange Benefits Act of 1996 was a good start, but we shouldn't stop there. Veterans of Gulf War I are still left languishing, uncertain if their service exposed them to insidious health threatening contaminants. Does our obligation to our current combatants extend beyond labeling them heroes? Is our obligation to protect the flag greater, more righteous, more just, and more moral, than our obligation to help veterans and their families? I think not.

I respectfully submit that this assault on First Amendment freedoms in the name of protecting anything is incorrect and unjust. This amendment would create a chilling environment for political protest. The powerful anger which is elicited at the sight of flag burning is a measure of the love and respect most of us have for the flag.

Prohibiting this powerful symbolic discourse would stifle legitimate political dissent. If it is to be truly representative of our cherished freedoms, the flag itself must be available as a vehicle to express these freedoms.

This is among the freedoms for which I fought and gave part of my body. This is a part of the legacy I want to leave for my children. This is among the freedoms my grandfather was defending in WWI. It is among the freedoms my father and late father in law defended during their combat service during WWII.

Please listen to these perspectives of ordinary veterans who know first hand the implications of tyranny and denied freedoms. Our service is not honored by this onerous encroachment on Constitutionally guaranteed freedoms.

Thank you.

Mr. CHABOT. Professor Parker, you are recognized for 5 minutes.

**STATEMENT OF RICHARD D. PARKER,  
WILLIAMS PROFESSOR OF LAW, HARVARD LAW SCHOOL**

Mr. PARKER. Thank you very much, Mr. Chairman, and I thank the committee for its invitation to me today.

Let me begin from a premise that will not be controversial, and that is that Government exists to and only to serve the people, to serve its interests, but not only its interests. Government exists also to serve the values of the people.

Freedom of expression is one of those most fundamental of our values, but it's not the only one. Indeed, the very meaning of the freedom of expression, its very scope depends on its accommodation with other values, many of which, in fact, undergird the freedom of expression itself.

Two things have long been clear about free expression. First, that at least outside the privacy of the home, it is not an absolute freedom. Second, it's no less clear that Government may regulate the content of speech in many circumstances, not only to deal with tangible harms to particular individuals, but also to correct generalized intangible harms. Let me give three examples.

First, obscenity. The Court said very clearly in 1973 and had assumed back into the 1940's that Government may prohibit the obscene speech in order to prevent a generalized pollution of the cultural environment and the degradation of women, in particular.

Secondly, statements that are knowingly or recklessly false about the public conduct of public officials which injure the reputation of those officials. Such statements may be regulated, may be officially sanctioned, not just in order to prevent the particular harm to a particular public official, but also, as Justice Brennan said in 1964, in order to vindicate the general premises of democracy.

Third example, hate speech. The Court in *Virginia v. Black*, of course, recently held that hate speech, cross burning, particularly designed to or intended to intimidate particular individuals, may be prevented, but that's not all it said. Go back to an early 1950's decision, the *Boharnay* decision. The Court made very clear in upholding a criminal libel law applied to prevent the libeling of racial groups that generalized harm can be done by hate speech and Government may prohibit it.

The prohibition of physical desecration of the flag, thus, is in keeping with this line of precedents. The value that runs through them all is the value of community, specifically national community. This is a value that's crucial to the freedom of speech, to its robustness, and in particular, community is a value that is essential to minorities, to protestors, to dissenters. For their protest or dissent to be effective, they must make connections with others. They must invoke the bonds that they share with others. The flag is the unique symbol, as Martin Luther King well knew, that enables them to do that.

But Congressman Nadler asked, "Well, what's the need?" The need specifically is that the Supreme Court by this five-to-four vote quite recently held that the flag represents simply one point of view. The purpose of this amendment is to correct that mistake on the part of five Supreme Court Justices.

But then I remember Congressman Frank has asked in the past, "Wouldn't it be enough simply for Government to encourage patri-

otism, or for all of us to condemn flag desecration?” Well, that could be said about obscenity, couldn’t it? That could be said about knowing or reckless false statements about the official conduct of public officials. Why sanction that? It could be said about hate speech. Why sanction that? The same is true here as there, and that is that a collective response to this kind of problem is often absolutely essential in order to vindicate the value of community that’s at stake.

Finally, let me say that we should keep in mind that this amendment is not designed to change the First Amendment. Far from it. It’s designed to restore the meaning that the First Amendment had for at least a century before the five-to-four vote in 1989 and to do so through one of the great provisions of our Constitution, Article V, the amendment process.

Article V, let me conclude by saying, should be understood for what it is. It is the cornerstone of legitimacy of American Government. American Government rests on the Constitution, but the Constitution does not rest on the Supreme Court. It doesn’t rest on five people in robes. The Supreme Court can make some mistakes and it’s the people who have the power under Article V to correct that mistake, those mistakes, and that is what is being proposed here. Thank you.

Mr. CHABOT. Thank you, Professor.

[The prepared statement of Mr. Parker follows:]

#### PREPARED STATEMENT OF RICHARD D. PARKER

Whether Congress should be permitted, if it chooses, to protect the American flag from physical desecration has been debated for more than a decade. The debate has evolved over time but, by now, a pattern in the argument is clear. Today, I would like to analyze that pattern.

Consistently, the overwhelming majority of Americans has supported flag protection. Consistently, lopsided majorities in Congress have supported it too. In 1989, the House of Representatives voted 371–43 and the Senate 91–9 in favor of legislation to protect the flag. Since that route was definitively blocked by a narrow vote on the Supreme Court in 1990, over two thirds of the House and nearly two-thirds of the Senate have supported a constitutional amendment to correct the Court’s mistake and, so, permit the majority to rule on this specific question. Up to 80% of the American people have consistently supported the amendment.

In a democracy, the burden should normally be on those who would block majority rule—in this case, a minority of the Congress, influential interest groups and most of the media, along with the five Justices who outvoted the other four—to justify their opposition. They have not been reluctant to do so. Indeed, they have been stunningly aggressive. No less stunning has been their unresponsiveness to (and even their seeming disinterest in) the arguments of the popular and congressional majority. What I am going to do is focus on the pattern of their self-justification.

I am going to speak frankly, not just as a law professor, but as an active Democrat. For a disproportionate share of the congressional, interest group and media opposition has been aligned with the Democratic Party. What has pained me, in the course of my involvement with this issue, are attitudes toward our democracy revealed in the structure of the argument against the flag amendment by so many of my fellow Democrats—attitudes that would have seemed odd some years ago, when I worked for Senator Robert Kennedy, but that now seem to be taken for granted.

#### I. ARGUMENTS ABOUT (SUPPOSED) EFFECTS OF THE CONSTITUTIONAL AMENDMENT: TRIVIALIZATION AND EXAGGERATION

The central focus of argument against the flag amendment involves the (supposedly) likely effects of its ratification. Typically, these effects are—at one and the same time—trivialized and exaggerated. Two general features of the argument stand out: its peculiar obtuseness and the puzzling disdain it exudes for the Congress and for the millions of proponents of the amendment.



### A. Trivialization

(1) *The “What, Me Worry?” Argument.* The first trivialization of the amendment’s effects is the repeated claim that there is simply no problem for it to address. There are, it is said, few incidents of flag desecration nowadays; and those few involve marginal malcontents who may simply be ignored. The American people’s love of the flag, the argument continues, cannot be disturbed by such events. It concludes that, in any event, the flag is “just a symbol” and that the amendment’s proponents had better apply their energy to—and stop diverting the attention of Congress from—other, “really important” matters.

What is striking about this argument is not just its condescension to the amendment’s supporters and to the Congress which, it implies, cannot walk and chew gum at the same time. Even more striking is its smug refusal to recognize the point of the amendment. The point is not how often the flag has been burned or urinated on or who has been burning it and urinating on it. Rather, the point has to do with our response—especially *our official response*—to those events. In this case, the key response has been that of the Court and, since 1990, of the Congress. When we are told, officially, that the flag represents just “one point of view” on a par, and in competition, with that of flag desecrators and that flag desecration should not just be tolerated, but protected and even celebrated as free speech, and when we get more and more used to acts of desecration, then, “love” of the flag, our unique symbol of national community, is bound gradually to wither—along with other norms of community and responsibility whose withering in recent decades is well known.

To describe what is at stake as “just a symbol” is thus obtuse. The Court’s 5–4 decision was not “just a symbol.” It was an action of a powerful arm of government, and it had concrete effects. To be sure, its broader significance involved values that are themselves invisible. The issue it purported to resolve is, at bottom, an issue of principle. But would any of us talk of it as “just an issue of principle” and so trivialize it? Surely, the vast majority of members of Congress would hesitate to talk that way. They, after all, voted for a statute to protect the flag. Hence, I would have hoped that the “What, Me Worry?” argument is not one we would hear from them.

(2) *The “Wacky Hypotheticals” Argument.* The second familiar way of trivializing the amendment’s effects is to imagine all sorts of bizarre applications of a law that (supposedly) might be enacted under the amendment. This line of argument purports to play with the terms “flag” and “physically desecrate.” Often, the imagined application involves damage to an image (a photo or a depiction) of a flag, especially on clothing—frequently, on a bikini or on underwear. And, often, it involves disrespectful words or gestures directed at an actual flag or the display of flags in certain commercial settings—a favorite hypothetical setting is a used car lot. This line of argument is regularly offered with a snicker and sometimes gets a laugh.

Its obtuseness should be clear. The proposed amendment refers to a “flag” not an “image of a flag.” And words or gestures or the flying of a flag can hardly amount to “physical desecration.” In the Flag Protection Act of 1989, Congress explicitly defined a “flag” as taking a form “that is commonly displayed.” And it applied only to one who “knowingly mutilates, defaces, physically defiles, burns, maintains on the ground, or tramples” a flag. Why would anyone presume that, under the proposed constitutional amendment, Congress would be less careful and specific?

That question uncovers the attitude beneath the “Wacky Hypotheticals” argument. For the mocking spirit of the argument suggests disdain not only for people who advocate protection of the American flag. It also depends on an assumption that Congress itself is as wacky—as frivolous and as mean-spirited—as many of the hypotheticals themselves. What’s more, it depends on an assumption that, in America, law enforcement officials, courts and juries are no less wacky. If the Constitution as a whole had been inspired by so extreme a disdain for our institutions and our people, could its provisions granting powers to government have been written, much less ratified?

### B. Exaggeration

(1) *The “Save the Constitution” Argument.* Having trivialized the effects of the proposed amendment, its opponents turn to exaggerating those effects. First, they exaggerate the (supposed) effects of “amending the First Amendment.” This might, they insist, lead to more amendments that, eventually, might unravel the Bill of Rights and constitutional government altogether. The argument concludes with a ringing insistence that the people and their elected representatives must not “tinker” or “tamper” or “fool around” with the Constitution.

The claim that the debate is about “amending the First Amendment” sows deep confusion. The truth is that the proposed amendment would not alter “the First Amendment” in the slightest. The First Amendment does *not* itself forbid protection of the flag. Indeed, for almost two centuries, it was understood to *permit* flag protec-

tion. A 5–4 majority of the Court altered this interpretation, only thirteen years ago. That very narrow decision is all that would be altered by the proposed amendment. The debate thus is about a measure that would *restore* to the First Amendment, its long-standing meaning, *preserving* the Amendment from recent “tampering.” Adding to the confusion is the bizarre claim that one amendment, restoring the historical understanding of freedom of speech, will somehow lead down a slippery slope to a slew of others undermining the Bill of Rights or the whole Constitution. A restorative amendment is not, after all, the same thing as an undermining amendment. What’s more, the process of amendment is no downhill slide. About 11,000 amendments have been proposed. Only 27—including the Bill of Rights—have been ratified. If there is a “slope”, it plainly runs *uphill*. The scare rhetoric, then, isn’t only obtuse. It also manifests disdain for the Congress to which it is addressed.

The greatest disdain manifested by this line of argument, however, is for the Constitution and for constitutional democracy—which it purports to defend. Article V of the Constitution specifically provides for amendment. The use of the amendment process to correct mistaken Court decisions—as it has been used several times before—is vital to maintaining the democratic legitimacy of the Constitution and of judicial review itself. To describe the flag amendment as “tinkering with the Bill of Rights”—when all it does, in fact, is correct a historically aberrant 5–4 decision that turned on the vote of one person appointed to office for life—is to exalt a small, unelected, tenured elite at the expense of the principle and practice of constitutional democracy.

(2) *The “Censorship” Argument.* The second exaggeration of (supposed) effects of the proposed amendment portrays it as inviting censorship. If Congress prohibits individuals from trashing the American flag, opponents say, it will stifle the freedom of speech. In particular, they continue, it will suffocate expression of “unpopular” or “minority” points of view. It will thereby discriminate, they conclude, in favor of a competing point of view. This line of argument is, essentially, the one adopted by a 5–4 majority of the Court.

It is, however, mistaken. The argument ignores, first of all, the limited scope of laws that the amendment would authorize. Such laws would block no message. They would leave untouched a vast variety of opportunities for self-expression. Indeed, they would even allow expression of contempt for the flag by words—and by deeds short of the “physical” desecration of a flag. Obviously, there must be some limit on permissible conduct. This is so even when the conduct is, in some way, expressive. What’s important is this: Plenty of leeway would remain, beyond that narrow limit, for the enjoyment of robust freedom of speech by all.

Secondly, the argument that such laws would impose a limit that discriminates among “competing points of view” misrepresents the nature of the American flag. Our flag does not stand for one “point of view.” Ours is not like the flag of Nazi Germany or the Soviet Union—although opponents of the proposed amendment typically make just that comparison. The American flag doesn’t stand for one government or one party or one party platform. Instead, it stands for an aspiration to national community despite—and transcending—our differences and our diversity. It doesn’t “compete against” contending viewpoints. Rather, it overarches and sponsors their contention. The 5–4 majority on the Court misunderstood the unique nature of our flag. A purpose of the flag amendment is to affirm this uniqueness and, so, correct that mistake. Thirdly—and most importantly—opponents obtusely ignore the fact that a primary effect of the amendment would be precisely the opposite of the one “predicted” by their scare rhetoric. Far from “censoring” unpopular and minority viewpoints, the amendment would tend to *enhance* opportunity for effective expression of those viewpoints. A robust system of free speech depends, after all, on maintaining a sense of community. It depends on some agreement that, despite our differences, we are “one,” that the problem of any American is “our” problem. Without this much community, why listen to anyone else? Why not just see who can yell loudest? Or push hardest? It is thus for minority and unpopular viewpoints that the aspiration to—and respect for the unique symbol of—national community is thus most important. It helps them get a hearing. The civil rights movement understood this. That is why it displayed the American flag so prominently and so proudly in its great marches of the 1960’s.

If we become accustomed to cumulative acts of burning, trampling and urinating on the flag, all under cover of the Supreme Court, where will that leave the next Martin Luther King? Indeed, where will it leave the system of free speech as a whole? As the word goes forth that nothing is sacred, that the aspiration to community is just a “point of view” competing with others, and that any hope of being noticed (if not of getting a hearing) depends on behaving more and more outrageously, won’t we tend to trash not just the flag, but the freedom of speech itself? Opponents

of the proposed amendment imagine themselves as champions of a theory of free speech—but their argument is based in a strange disdain for it in practice.

I am, no doubt, preaching to the choir. The House of Representatives voted 371–43 for a flag protection law. Most Representatives, therefore, rejected the “censorship” argument in 1989. Now—with the Court *absolutely barring* such a law on the mistaken ground that *any* specific protection of the flag discriminates among competing “points of view”—Representatives who support protection of the American flag simply have no alternative but to support the proposed constitutional amendment.

## II. ARGUMENT ABOUT (SUPPOSED) SOURCES OF SUPPORT FOR THE AMENDMENT

Most opponents of the amendment don’t confine themselves to misrepresenting its effects. Repeatedly, they supplement those arguments with *ad hominem*, disparaging claims about its supporters as well. Again, they combine strategies of trivialization and exaggeration. What’s remarkable is that they seem to assume their generalizations will go unchallenged. They seem to take for granted a denigrating portrayal of others—as well as their own entitlement to denigrate.

The denigration is not exactly overt. It often takes the form of descriptive nouns and verbs, adjectives and adverbs, woven into apparently reasonable sentences. By now, we’re so used to these terms of derision that we may not notice them or, worse, take them as signs of “wisdom.”

The trivializing portrayal of supporters tends to include references to the (supposedly) “simple” or “emotional” nature of their views—which, in turn, are trivialized as mere “feelings.” It’s often asserted that they are behaving “frivolously.” (Only the opponents, according to themselves, are “thoughtful” people.) Elected officials who back the amendment are said to be “pandering” or “cynical” or taking the “easy” course. (Only opponents, according to themselves, are “courageous” or “honest.”) The patriotism of supporters is dismissed as “flag-waving.”

The (negatively) exaggerated portrayal tends to include references to the (supposedly) “heated” or “aggressive” or “intolerant” nature of support for the amendment. (Only the opponents, according to themselves, are “deliberative,” “restrained” and “respectful of others.”) The goal, of course, is to suggest (not so subtly) that the supporters are fanatics or bullies—that they are like a mob that must be stopped before they overwhelm law, order and reason.

A familiar argument fusing trivialization and exaggeration—a *Washington Post* editorial of April 24, 1998 is typical—lumps the flag amendment’s supporters with supporters of a great variety of other recently proposed amendments. It smears the former by equating them to others who advocate very different measures more readily belittled as silly or feared as dangerous. There is a name for this sort of argument. It is guilt-by-association. (But then the opponents of the flag amendment, according to themselves, would never employ such rhetoric, would they?)

This is odd. These “thoughtful” people seem to be in the habit of making descriptive generalizations that are not just obtuse but false—not just disdainful but insulting. Why?

## III. IGNORING COUNTER-ARGUMENT

Part of the answer, I believe, is that opponents of the flag amendment are in another habit. It is the habit of not really listening to the other views. Not listening makes it easier to caricature those views. And, in turn, the caricature of those views makes it easier not to listen to them. Anyone who’s been involved with this issue—on either side—over the years, and who’s had an opportunity to see every reference to it in the media across the country, can describe one repeating pattern. Most of the time, the issue is not mentioned. Then, in the weeks before one or another congressional consideration of it, there comes a cascade of editorials and commentary—about 90% hostile to and professing alarm about the amendment. Supporters can describe the other aspect of the pattern: most of the media simply will not disseminate disagreement with that point of view. Speaking from my experience, I can tell you that only a few newspapers have been willing to publish brief responses to what they assume is the one “enlightened” view—their own.

There is an irony here. Those most alarmed about (supposed) discrimination against the views of people who burn or urinate on the American flag are themselves in the habit of discriminating against the views of others who favor protecting the flag. Warning of a (supposed) dampening of robust debate, they dampen robust debate—and they do it in good conscience and with no conscious intent to apply a double standard. What explains such puzzling behavior?

## IV. THE VALUE OF PUBLIC PATRIOTISM

I've characterized the question presented by the flag amendment as involving the value of "community" at the national level. But most opponents seem disinclined to accept that formulation. The question for them seems to involve something they imagine to be narrower than community. For them, the question seems to involve the value of "patriotism." Beneath much of the opposition is, I think, an uneasiness about patriotism as a public value.

I know: Every opponent of the flag amendment insists that he or she is a patriot, that he or she "loves the flag" and, *personally*, would defend one with life and limb. I don't doubt their sincerity. But I trust I'll be forgiven if I also try to understand the actual behavior of opponents and the language they use to describe the amendment and its source of support. I trust I'll be forgiven if I try to understand all this in terms of a distinction that I think they make between "personal" and "public" patriotism.

I believe that many opponents of the amendment have come to see patriotism as a strictly personal matter—much like religious faith. As such, they affirm its value. But they are, I believe, uneasy about public patriotism. If the uneasiness were focused only on government *coercion* of patriotism (a coerced flag salute, for example) few would differ. But it is focused, also, on its *protection* by government (that's what the flag amendment is about), and to some degree it may extend to governmental *subsidization* and *facilitation* of public patriotism as well. For the implicit comparison made by opponents of the flag amendment between patriotism and religious faith carries consequences with it. Two main assumptions lead them to oppose even minor sorts of government assistance to religion. First, there is the assumption that religion is not just deeply personal, but deeply emotional and potentially explosive as well, and that any entanglement of government with religion may therefore produce dangerous conflict and official oppression of freedom and diversity. Second, there is the assumption that, in an increasingly secular age, religious faith is not really terribly relevant to good "governance" anyway—that is, unless "religion" is defined to encompass a wide range of currently accepted secular values.

The same kinds of assumptions underlie both the "exaggeration" and the "trivialization" arguments made by opponents of the flag amendment. First, they imagine that public patriotism taps into raw emotions that threaten to cause conflict and official oppression. Thus they insist that the proposed amendment endangers constitutionalism and freedom. Second, they imagine public patriotism as narrowly militaristic and old-fashioned. In an age of "multiculturalism," on one hand, and of "globalism," on the other, what need is there for it in government and in public life? When the amendment's opponents do affirm the public value of the flag, moreover, they tend to do so by defining "the flag" to stand simply for "the freedom to burn it."

These assumptions and these arguments are perverse. So, too, is the underlying equation of patriotism to religion. For public patriotism is surely basic to motivating broad participation in, and commitment to, our democracy. Far from endangering freedom and political order, it is essential to the effective enjoyment of freedom and maintenance of the legitimacy of government. If national projects, civilian or military, are to be undertaken—if our inherited ideals of liberty and equality are to be realized through concentrated national effort—public patriotism simply has to be valued; its unique symbol should, therefore, be protected.

Let me speak, finally, as a Democrat: When I was growing up, Democrats knew all this. My own hero, Senator Robert Kennedy, would never have doubted the value of public patriotism. He would never have dismissed it as trivial, dangerous or "right wing." I believe that he would have voted—as his son did in 1995 and 1997—to restore to the First Amendment the meaning it had, in effect, for two centuries of our history. That belief encourages me to see this as a truly nonpartisan effort, deserving fully bipartisan support. And, so, it encourages me to urge the United States House of Representatives to permit consideration of the proposed amendment by representatives of the people in the states, submitting this matter to the great democratic process established by Article V of the Constitution.

Mr. CHABOT. I recognize myself for 5 minutes for the purpose of asking questions. General Brady, I will begin with you if that's okay.

Major BRADY. Yes, sir.

Mr. CHABOT. With a military career that spanned 34 years, and now as head of a broad coalition of groups associated with the military, I'm sure that you've spoken at quite length about today's pro-

posed amendment with active duty as well as retired military personnel. Can you give us some sense of the feelings of veterans and retired soldiers with whom you've interacted as to their reactions to this amendment and what the veterans you come into contact with, what do they feel about this amendment?

Major BRADY. Yes, sir. Generally, they're no different than the general population. I do get a chance to get around and speak to many young people in the military. As I said, my daughter serves, and she's in Baghdad right now, and I talk to a lot of her friends.

The tragic thing is that most of them don't know that it's legal to burn the American flag. They would be horrified to hear that and to have anybody tell them that they're fighting for this country, or any veteran who's ever fought for this country in order that people could be free, to burn the American flag is truly insane.

I think the young people that I've seen, I think what we've seen is the birth of another "greatest generation," and I think that started in New York with the firemen and the policemen in that action, and I've seen it among the young people in Iraq. They're just phenomenal. They're so far superior to what I was and my generation was in terms of fighters and patriots. It's just phenomenal. But they would be horrified to have anyone say to them that they're fighting for the rights of flag burners, without any question.

By the way, he said that, the gentleman from New York said there had been no flag burnings. There was 87 flag burnings out in California just a few weeks ago. So this is a thing that has gone on in America as well as the rest of the world.

But nobody better stand up in front of these troops and tell them they're—— [Building vibration.]

Maybe that was a retreat.

Mr. CHABOT. I don't know, it was pretty loud. Okay. Thank you, sir. Thank you very much, General.

Lieutenant Scannella, let me ask you the next question, if I can. Given your experience in escorting the flag around the country and having an opportunity to talk with many folks about this and seeing what they have felt about coming into contact with this flag, and there's this question about whether it's just speech. If someone were to damage or destroy or burn the flag that you've been escorting around that was at ground zero, do you believe that most Americans would simply say that this was just free speech and, therefore, that should be protected?

Lieutenant SCANNELLA. No, I don't believe most Americans would feel that it's free speech. As the General said, I don't think most Americans know that it's legal to burn the flag. My experience with the emotion that poured out of people when they saw the flag or they talked about the flag or they touched the flag was very emotional, very defensive, very patriotic.

Like I said, it brings out a lot of emotion from a lot of people, and I don't mean just our flag. We also, after 9/11, saw how all the flags were out in front of everybody's home. People that never displayed a flag went out and bought a flag. People stuck them on their car. They stuck them everywhere. The American flag is a symbol and it goes right to the core of every American in this country.

Mr. CHABOT. Thank you. Professor, let me ask you a question real quick. My time is running out. I have got one for you, Mr. May, but I am running out of time here.

Do you believe that this proposed amendment to the Constitution carves out an exception to the First Amendment or was it the Supreme Court's decision in the Johnson case that carved out an exception to our traditional view of flag burning, and does this measure really amend the Bill of Rights as opponents of the amendment sometimes have claimed?

Mr. PARKER. Absolutely not. It was the Supreme Court majority of five which, in effect, amended the First Amendment. This is designed to restore the traditional meaning of the First Amendment.

Mr. CHABOT. And is there anything short of amending the Constitution at this point, given the decision of the Supreme Court, is there anything else we can do to protect the flag?

Mr. PARKER. Absolutely nothing, sir.

Mr. CHABOT. My time is expired and I will at this point recognize the gentleman from New York, Mr. Nadler, for 5 minutes.

Mr. NADLER. Mr. May, you testified that you've worked with veterans over the years and you're a disabled Vietnam veteran yourself. It's all very well to see all this emotional testimony about veterans, but do you believe that Congress in practical terms have provided adequate assistance to our veterans in terms of health care and other necessary benefits, or do you think present Government policy adequately shows respect for our veterans?

Mr. MAY. I think there is substantial distance to be traveled yet for the public response to be reflective of what I would deem to be a true commitment to veterans and their service. For example, in my area, we have veterans who need to wait months in order to get an appointment with the local VA outpatient clinic. In my own case, I've been waiting for weeks now to get authorization to be evaluated for new prostheses. In my case, my need is directly attributable to my service, since I was injured while I was in the service.

I think, really, an unmined area, though, for services and to consider the impact of combat, is on families, as I indicated in my testimony. The Agent Orange Benefits Act of 1996, that was a long time ago, but that, for the first time, extended benefits to children of Vietnam veterans whose health conditions might be attributable, or where there is a fair amount of evidence that it was attributable to the veteran's service in Vietnam and exposure to Agent Orange. There's a lot we can do yet.

Mr. NADLER. Thank you. Professor Parker, let me say before I ask you the question that I think everyone who opposes this amendment on this panel certainly in Congress loves the flag as much as anyone else. The question is whether we can impose—is whether it's proper as an expression of American freedom to use the criminal law to punish someone who disagrees with us.

Let me ask you a question. Do you think that it would be right to arrest actors in a film or a play who, playing Nazi soldiers, burn an American flag?

Mr. PARKER. It would all depend on what was the applicable statute, wouldn't it? If the statute—

Mr. NADLER. You know perfectly well, I assume, that no one would use a statute to arrest actors who, as part of portraying Nazi soldiers burning a flag, I don't think anybody would arrest them.

Mr. PARKER. I can't imagine they would, but I don't—but I—

Mr. NADLER. Okay. Now, but on the other hand, on the other hand, the real purpose of this amendment is that people who aren't actors who do the exact same act, using that to express their disagreement with the policy of the current Government, that should be criminalized. That's what you're testifying, essentially.

Mr. PARKER. Again, I'm sorry, but it would depend on what the applicable statute was, which is up to Congress. The amendment—

Mr. NADLER. Well, but the applicable statute that this amendment—the only purpose of this amendment is to make a statute possible that would make criminal the burning of the flag, right?

Mr. PARKER. Well, would there be an intent element? Most—

Mr. NADLER. Intent for what? Intent to burn the flag, or intent by burning the flag to express an opinion that we don't approve of? That's the key.

Mr. PARKER. Well, I doubt the latter would be anything Congress would write into the law, but Congress might add an intent—

Mr. NADLER. But what does desecration mean? When we burn the flag to dispose of it respectfully, that's not desecration.

Mr. PARKER. That's right. Yes.

Mr. NADLER. When someone burns the flag to say that he doesn't agree with invading Iraq or the Vietnam war or whatever, that's desecration, right?

Mr. PARKER. There's no question that what Congress is empowered to do by this amendment is to regulate content, but not to discriminate by point of view. The flag doesn't stand for any particular policy. It doesn't stand for the flag. It stands for—

Mr. NADLER. So in other words, in other words, burning a flag per se is neutral. It may be done properly to dispose of it. It may be done harmlessly by actors in a play portraying villains, such as Nazi soldiers. But if done by people with the intent of expressing an unpopular point of view, that's desecration?

Mr. PARKER. It could also be desecration if they were expressing a popular point of view.

Mr. NADLER. Could you ever see such a prosecution?

Mr. PARKER. I suppose so, sure. Again, Congress is the group that's empowered here. I do trust Congress. I don't—

Mr. NADLER. I don't trust—let me say this. I don't trust Congress. [Laughter.]

I certainly do not trust Congress to—

Mr. CHABOT. Mr. Nadler and I finally agree on something. [Laughter.]

Mr. NADLER. I do not trust Congress or any other legislative body to protect unpopular opinions. That's why we have the Bill of Rights. In the Supreme Court in a 1943 decision, during the middle of World War II, upholding the right of Jehovah's Witnesses—I'm sure you are familiar with the decision, Professor—upholding the right of Jehovah's Witnesses to refrain from the compulsory recitation of the Pledge of Allegiance in public schools, a decision which was met with similar denunciations and even violence the flag

burning decision was met with, Justice Jackson, in explaining that decision, said, "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, free press, freedom of worship and assembly, and other fundamental rights may not be submitted to a vote. They depend on the outcome of no elections."

It seems to me that what we are really debating here is whether we agree with Justice Jackson that people whose views we hate, whose action in burning a flag, an action I would detest personally, to express a view that I may agree with or a view that I may detest, but nonetheless, the Constitution protects their right to do those things as free speech and the people who are proposing this amendment are saying it should not protect that form of expression.

Mr. CHABOT. The gentleman's time is expired. The witness has an opportunity to address the question.

Mr. PARKER. Briefly sir, I guess, then, that by the logic of your argument, all hate speech regulation would be wrong. One comment on Justice Jackson. He said that the Constitution removes, or the Supreme Court's interpretation of the Constitution removes issues from the control of majorities. That's technically right, but it doesn't remove them from the control of super-majorities. That's the point of Article V of the Constitution. The people have the right to amend the Constitution and they may use that right to correct Supreme Court decisions that were wrongly decided.

Mr. NADLER. May I have one extra minute to comment on this?

Mr. CHABOT. The gentleman's time is expired. With unanimous consent, the gentleman is granted one additional minute, if he stays within the minute.

Mr. NADLER. I will stay within the minute. Clearly, we have the right to amend the Constitution. No one denies that. The whole point of the Bill of Rights, though, is that we should extend freedom of speech, freedom of worship, even to people we hate, even to people whose views we hate, freedom of speech to people whose views we hate, freedom of religion to people's religions we can't stand, and that shouldn't be subject to popular votes. Obviously, we could amend the Constitution. We could amend the Constitution to make the country a tyranny. It doesn't mean it's a good idea.

Mr. PARKER. Absolutely.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Iowa, Mr. King, is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

I direct my first question to Mr. May. The statement was made in opening remarks here before the testimony that those who support this amendment value the symbol more than the freedom, and I direct this question to you, Mr. May, as one whom I think is the most likely to be able to shed some light on that statement, since I connect with that intellectually.

Mr. MAY. My interpretation—

Mr. KING. Yes.



Mr. MAY.—of that statement? Well, I think some of the proponents have merged the flag with the rights and the freedoms and the values that we thousands, millions of veterans have fought for over the years, and it's as if the flag, which is the symbolic representation, becomes that which it represents rather than just a symbol of that. So if we destroy the flag, implicitly, we destroy those freedoms.

Mr. KING. If we have our freedoms and our liberty, those things embodied in the Declaration and the Bill of Rights on the one hand, and the symbol of the flag on the other hand, and we have the choice between the two, can you conceive of an American valuing the symbol of the flag more than the freedoms that it represents? Is that a conceivable concept for you as a patriotic American?

Mr. MAY. Well, I think to the extent that, as I said, some seem to have merged those two, then I think it is something that I am seeing and have seen, that people seem to be willing, not because of that clear distinction that you point out but because of the absence of a bright line, have been willing to forego or move away from some of those freedoms in the interest of preserving the symbol of those freedoms.

Mr. KING. But if we have that distinction, then it is a difficult thing to define, would you grant that?

Mr. MAY. If we have the distinction, I think it's very easy to define and I think under those circumstances, more people would side for protecting that which is represented by the flag than would side with protecting the flag itself.

Mr. KING. Thank you, Mr. May. The Americans I know stand for the freedom.

But I would direct a question then to General Brady, and this remark was made in testimony and you said that if we approve this amendment, I believe that all the sacrifices of the people that went before me would be for naught. Mr. May's statement. How does that resonate with you as a holder of the Congressional Medal of Honor?

Major BRADY. You know, my view of this thing is that what we're really talking about here is the Constitution. All the soldiers that I ever knew, all the people that I ever knew that went into combat, that's what they were fighting for. In a more practical sense, in a more immediate sense, they were fighting for their buddies and their own lives and everything. But the thing that got them there, the thing that motivated them was the Constitution.

The flag was a physical embodiment of the values embedded in that Constitution and that's why more Medal of Honors have been given for flag-related actions than for any other action. They died for that flag, but they did not die for a piece of cloth. They died for the values embedded in that flag and those values are in our sacred Constitution.

So, you know, it's not the flag, as we say, stupid, it's the Constitution that this is all about, and that's what concerns most of us.

Mr. KING. Thank you, General Brady. There has been so much powerful testimony here, I don't know that I can enhance this with any further question except to make the statement that in this city this spring, I have watched flags desecrated by the hundreds and

it is a chilling and saddening thing to see going down the streets of Washington, D.C.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. CHABOT. Thank you, Mr. King.

The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. May, I just want to let you know that every time we consider the constitutional amendment, there is virtually every time a concurrent slashing of veterans benefits. Just in the last couple of weeks, we voted to cut veterans' benefits, veterans' health care, disability benefits \$28 billion, and then we come up with this. So, I mean, you have to understand what the process is.

Some things have been said here. The Chairman mentioned stealing somebody's flag and burning it. That's illegal. I mean, that's not what we're talking about here, and General Brady, you mentioned, you kept talking about burning the flag and didn't know it was legal to burn the flag, was that your testimony?

Major BRADY. No. What my testimony is, that the vast majority of the American people do not know that it is legal to burn the American flag and there have been three or four arrests recently by policemen of people who desecrated the flag, the policemen themselves not being aware that what that person did was legal.

Mr. SCOTT. We heard somebody talking about all the flag burnings they've seen. The only time I've seen the flag burned was a flag burned by the American Legion. The photos in the paper—I'm saying what I have physically, what I have seen with my eyes, and are more flags burned by Boy Scouts and the American Legion or by political protestors?

Major BRADY. You're talking about the retirement of a flag? Is that what you're talking about?

Mr. SCOTT. Yes.

Major BRADY. You think that's a desecration of the flag?

Mr. SCOTT. Oh, okay. We're talking not burning, we're talking about desecration?

Major BRADY. Desecration means to put to unworthy use. When you retire a damaged flag, that is not—

Mr. SCOTT. Okay. Now we're getting there. So we're not talking about burning the flag. We're talking about disrespect.

Major BRADY. Yes. It says desecrated. It doesn't say burned.

Mr. SCOTT. Okay. Now we're getting there. And Professor Parker said we're talking about content, so as the gentleman from New York said, if you burn the flag while you're saying something respectful, that's okay. That's your testimony?

Major BRADY. It's certainly not my testimony.

Mr. SCOTT. Well, if you burn the flag and say something nice and respectful while you're burning the flag, that would be okay?

Major BRADY. If it's a worn-out flag and it's done by the Legion, certainly—and, in fact, they do—

Mr. SCOTT. If you burn the flag and say something insulting, then that should be a criminal act.

Major BRADY. I see, yes. One thing is an act and the other thing is free speech. You're free to say anything you want about the flag. You're just not free to burn it.

Mr. SCOTT. No, no, we already agreed that burning the flag was okay. You can't have it both ways. You said the American Legion, retiring a worn-out flag, can burn it. That's okay.

Major BRADY. Yes, but that's conduct.

Mr. SCOTT. That's content, okay. Now we're understanding where we're going. If you say something nice—am I right, if you say something nice and respectful as you burn the flag, you want that to be okay. If you say something insulting while you burn the flag, you want that to be a criminal act, is that right?

Major BRADY. I think it depends on the condition of the flag. I don't know really where you're going, but if you burn a flag, a perfectly good flag, that should not be legal according to the Constitution. That is not speech. Whatever you say is fine.

Mr. SCOTT. How about let's get to disrespect and desecration. Is violating the United States Code title IV desecration?

Major BRADY. You've got to help me, Professor Parker. I don't know where this guy is going. I don't know what that is.

Mr. PARKER. Does that have to do with the flag etiquette?

Mr. SCOTT. That's the flag code. If you violate the flag code, is that desecration?

Lieutenant SCANNELLA. If I can help you here, I did some extensive research on the flag considering my involvement with it. United States Code clearly states that when the flag is no longer a fitting emblem for this country, then it should be destroyed, preferably by burning, when it is no longer a fitting emblem.

Mr. SCOTT. Okay. Tell us how—you're saying it's okay to burn the flag as long as you're saying something respectful in a ceremony—

Lieutenant SCANNELLA. No, sir, I did not say that. No. When it is no longer a fitting emblem. When a flag needs to be retired—

Mr. SCOTT. Then it can be burned, is that right? I mean, I only have 5 minutes. It's okay to burn the flag as long as you're saying something respectful when you burn it—

Lieutenant SCANNELLA. No, sir.

Mr. SCOTT.—if it's worn out.

Lieutenant SCANNELLA. No, sir, not according to the—not according to the United States Code.

Mr. SCOTT. If it's worn out and you burn the flag and say something respectful, it's okay. That's your testimony.

Lieutenant SCANNELLA. My testimony is just what I read—

Mr. SCOTT. And if it's worn out—

Lieutenant SCANNELLA.—from the code.

Mr. SCOTT. And if it's worn out—

Lieutenant SCANNELLA. When it is no longer a fitting emblem, it should be destroyed, preferably by burning.

Mr. SCOTT. Okay.

Lieutenant SCANNELLA. You can interpret that—

Mr. SCOTT. Wait a minute—

Lieutenant SCANNELLA.—the way you choose.

Mr. SCOTT. And suppose you say something insulting while you destroy a worn-out flag.

Lieutenant SCANNELLA. We're here to clarify that. That's why we're here, to make that illegal.

Mr. SCOTT. Illegal, okay. So we agree.

Lieutenant SCANNELLA. Yes, sir. No, we don't agree.

Mr. SCOTT. Well, we don't agree on what we're going to do with the act—

Lieutenant SCANNELLA. No, we don't—

Mr. SCOTT.—but you keep switching back and forth. It's a very simple question. If you—

Lieutenant SCANNELLA. I believe I've answered your question, sir.

Mr. SCOTT. Well, you certainly have.

Mr. CHABOT. The gentleman's time has expired.

Mr. SCOTT. May I ask consent for one additional minute, Mr. Chairman?

Mr. CHABOT. Without objection.

Mr. SCOTT. Title IV of the U.S. Code says, flag and seal, seat of Government and the States, and goes on and on about the proper way to display the flag, use the flag, respect for the flag. Title IV of the U.S. Code, section 8, subsection D says, and I quote, "The flag should never be used as wearing apparel." You're familiar with that part of the U.S. Code, anybody? Is the gentleman in the front row desecrating the flag, wearing it as wearing apparel?

Mr. PARKER. Could I respond, sir?

Mr. CHABOT. Yes.

Major BRADY. It's not a flag.

Mr. SCOTT. Oh, it's not a—well, what is a flag?

Major BRADY. The flag is clearly, clearly defined, and in fact, it's defined by the Congress. A fifth grader knows what a flag is.

Mr. SCOTT. So it's a flag if it looks like a flag?

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Tennessee is recognized for 5 minutes. Would the gentleman yield to me for just 1 minute, for not even a minute—

Mr. JENKINS. Yes, Mr. Chairman.

Mr. CHABOT.—for just a moment? Thank you. I appreciate the gentleman yielding.

Just to clarify this, I'd like to read what it is that we are talking about. It's just a few words. It says, "The Congress shall have power to prohibit physical desecration of the flag of the United States." So that's all this says. There are, as we know, ceremonies that occur in veterans' organizations periodically around the country to respectfully destroy a flag when it has become worn out, and I think that that is clearly, and common sense differentiates that from someone in some sort of demonstration—I don't even want to discuss what has happened during certain times at certain demonstrations with the flag, but among other things, sometimes they are burned. That's very different from a veterans' organization that is destroying a worn-out flag.

I thank the gentleman for yielding and the gentleman is now recognized.

Mr. JENKINS. Thank you, Mr. Chairman. I don't have any questions. This is my fourth term in the House of Representatives and we've had this discussion every session that I've been here. I concluded long ago that any questions I might ask would not change the opinion of those whose opinions differ from mine, and certainly the questions of others will not change my opinion. I'm ready to

support this amendment, again, for the fourth time, and I will yield the balance of my time to the Chairman if you have additional questions.

Mr. CHABOT. I thank the gentleman. I thank the gentleman for yielding. The only thing that I would comment, when the gentleman talks about the discussions on one side or the other aren't going to persuade the folks on the other side whose minds are already made up, that's probably true, not only on this issue but many of the issues that we deal with in Congress, particularly in this committee. But I thank the gentleman for yielding and I'd like to get to the mark-up relatively soon, so I'm not going to take up any more time for questions. The gentleman's time is expired.

The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I don't think I could have said it any more eloquently than my friend from Tennessee. I've been here—how many times have we dealt with this, six, seven, eight—

Mr. CHABOT. You've been here longer than me.

Mr. WATT. Well, I've been here 11 years. I'm just not sure we've dealt with it every single year that I've been here. But if we've done it every year that I've been here, we've done it 11 times, and there are two things that I've found from the prior debates.

Number one is the same thing that my friend, Mr. Jenkins, said. There are strongly held beliefs on both sides of this issue and probably none of the testimony is going to change any opinions.

But the second thing I think we established three or 4 years ago at least was that this is not an issue that deals with patriotism. I don't think there's an unpatriotic person at this witness table here, and I don't think there's an unpatriotic person in the audience here. But I also don't think there's an unpatriotic person in the Congress. For those who make this issue a substitute for—regardless of which side you're on, for whether you are a patriot or not, I think this is really a discredit to the debate and to the deeply-held beliefs that people on both sides of this issue have had.

So I don't have any questions of the panelists. I just hope that when we get to the floor, we can have the kind of debate that I think we succeeded in having 1 year, I think it's two or 3 years ago. We really had a high-level, civilized debate where all of us really looked like patriots and it didn't deteriorate into a name-calling contest where one side was calling the other unpatriotic and the other side was calling the other side unpatriotic.

Maybe I'll say more about that when we get to full committee, but I just think we ought to go on and do what we've got to do. Even though Mr. Jenkins and I are on opposite sides of where we come out on this issue, I think his comments really speak for me on this issue. I yield back.

Mr. CHABOT. Thank you. The gentleman's time has expired.

The gentleman from Indiana, Mr. Hostettler, is recognized.

Mr. HOSTETTLER. Thank you, Mr. Chairman. My questions will go more to the issue of why Congress is here today deliberating on this very important issue, a provision which I strongly support, even though I generally do not support amending the Constitution.

I think that the fact that we are amending the Constitution to protect one of the true symbols of America is vitally important.

We have come here today because five individuals in black robes have determined that this is protected speech, while I think, Professor Parker, you talked earlier about the idea of cross burning was not protected speech. And so the finicky, haphazard opinions of the five individuals have brought us to the point where Congress is deliberating and two-thirds of us have to pass it in the House and the Senate because five people have decided that this type of behavior is a different type of behavior than other types of behavior, and that's troubling to me.

I think it was troubling to the Framers of the Constitution, too, in the discussion between the Anti-Federalists and the Federalists, the idea that the judiciary, that life-appointed, unaccountable to the populus at large would make such profound impact statements on policy, and policy essentially in our country whereby the will of the majority that should be generally exercised through the legislative process, through the Article I branch, that we find ourselves here not being able to do it by normal law making procedure but by the super-majority that was discussed earlier.

My question, Professor Parker, you probably understand the writings of the Anti-Federalists and the Federalists with regard to the Constitution, the idea that we are here today because five people in black robes have decided that we must come here and that two-thirds of the House and two-thirds of the Senate must confer to amend the Constitution when they can, in fact, say that this type of behavior is protected and this type of behavior is not protected by the Constitution.

Do you find that the concerns of the Anti-Federalists are being realized today as we meet and that, in fact, some of the folks that our first witness talked to, folks like Hamilton and Madison and Jay and Washington, when they penned the Constitution, when they said Article I, Section 7 is how we make laws and Article V of the Constitution is how we amend the laws, are those concerns that some of the people at the founding of this country had with regard to the judiciary, are those, in fact—are we realizing them today, just today?

Mr. PARKER. Yes, sir. I believe we are, actually. I don't believe either the Federalists or the Anti-Federalists had in mind the kind of very active judicial review that we've become familiar with over the last century. Remember, it really only began around 1900. Up until then, the Supreme Court only two or three or four times intervened in a major way in American political life.

In the 20th century, the Court sometimes, of course, played an absolutely vital role. Think of *Brown v. Board of Education*. On other occasions, for decades, it has now seemed to have done bad work for America. Think of the first four decades of the 20th century.

Most recently, the Court, as I'm sure you're aware, sir, has become more and more self-confident, shall we say, announcing that it is the voice of the Constitution, and I wouldn't be surprised if Congress would have something to say about that.

Mr. HOSTETTLER. But even in, for example, you mentioned *Brown v. Board of Education*, in the practical workings of Govern-

ment subsequent to *Brown v. Board* and then *Aaron v. Cooper*—I watched recently on a C-SPAN program a discussion by a professor from the Kennedy School of Government—actually, I don’t have his name, but highlighted the fact that, in fact, even with *Brown v. Board*, that it was actually ultimately the act of Congress in the Civil Rights Act of the first half of the 1960’s that actually gave power to the idea that there should be equality in America.

And so it was through those legislative initiatives, because the Court, in fact, even as late as the 1950’s and the 1960’s really didn’t have the power, as they don’t today, to enforce their own decision, and so Congress had to move and had to act to make civil rights a reality in this country, isn’t that—

Mr. PARKER. That’s absolutely true and that fact is often forgotten, that there was not much real desegregation of the public schools until the end of the 1960’s and it was Congress that did the heavy lifting.

Mr. HOSTETTLER. Okay. And so, once again, we find ourselves, the will of the majority of the people through the regular legislative process thwarted by this perception that five people in black robes must bring about change with two-thirds of the vote of the House of Representatives, two-thirds of the vote of the Senate, in order to amend the most sacred document in America—well, next to the Declaration of Independence, I will say—to amend this great document in order to do what a vast majority of Americans believe is common sense, and that is to protect a symbol that many veterans are awestruck by when they come in contact with it, and—

Mr. CHABOT. The gentleman’s time is expired, but—I didn’t mean to cut you off there, but—

Mr. HOSTETTLER. No, no. I was pontificating, Mr. Chairman—  
[Laughter.]

—and I apologize for that—

Mr. CHABOT. I didn’t say that.

Mr. HOSTETTLER. That’s right. But I yield back the balance of my time.

Mr. CHABOT. The gentleman can respond to the question.

Mr. PARKER. I would just say that one—

Mr. CHABOT. I kept trying to find a pause there somewhere, John. I didn’t want to interrupt you. [Laughter.]

Mr. HOSTETTLER. That’s why I don’t have any periods in any of my statements, Mr. Chairman. [Laughter.]

Mr. CHABOT. You may respond.

Mr. PARKER. One function of a constitutional amendment is to send a message to the Supreme Court, a message that I think they could use hearing at this point.

Mr. CHABOT. Thank you very much. The gentleman’s time is expired.

The gentleman from Florida, Mr. Feeney, is recognized for 5 minutes.

Mr. FEENEY. Thank you, Mr. Chairman.

The first thing I’d like to do is to associate myself with Mr. Watts’s remarks, and that is especially on sensitive issues like this, ad hominem arguments rarely shed much light, but often generate a lot of heat, and I happen to agree with him greatly.

But having said that, any time I get an opportunity to ask questions of a Harvard law professor as opposed to the other way around, I'm going to take it. I'm intrigued and actually fascinated by your argument that there is a substantive difference between a restorative amendment to the Constitution as opposed to an undermining amendment, and actually, to follow up with that, you know, after *Marbury*, the Court has announced that it is emphatically within the province of the Court to say what the law is, but a lot of us happen to believe that, ultimately, what the Court says the Constitution means is correct when they were correct, and when they were wrong, the Constitution still speaks for itself. And after all, all of us in the executive and the Congressional and in the judicial branch take the same oath to uphold the same Constitution.

Historically, I think it was President Jackson that took issue with the Supreme Court's decision in the *National Bank* case and actually vetoed on constitutional grounds where he stood squarely against the decision of the Supreme Court, and, of course, Lincoln in his famous debates with Douglass took issue with the Court's decision in the *Dred Scott* case.

Here, we have an instance where 48 or so of the 50 States' duly sworn legislatures agree to uphold the Constitution, understood what free speech was, and nonetheless passed a law prohibiting flag burning. We've got a case where we've got 200 years of Federal jurisprudence that never struck down flag burning and we've got a five-four majority that basically says that free speech includes not just speech, but includes actions, including burning the United States symbol.

So if you could deal with the—I'm fascinated by the issue of the difference between a restorative amendment and an undermining amendment, if you could elaborate a bit on that.

Mr. PARKER. As you suggested, sir, the position that you're elaborating was Lincoln's position. It was Jefferson's position. It was Jackson's position. It was Franklin D. Roosevelt's position. Let's take Lincoln in particular.

Throughout the debates of the 1850's, Abraham Lincoln said that he, of course, respected the Supreme Court. He respected its decision in the *Dred Scott* case, but he believed it was wrong. He believed that he had——

Mr. FEENEY. Well, didn't he say that, not necessarily that it was wrong, but that it was limited to the effect on the parties themselves and not to others?

Mr. PARKER. Well, he did say that, but he went farther. He said it was just a wrong and mistaken interpretation of the Constitution and he clearly took the view that elected officials, politicians, and citizens have a right to disagree with the Court, to interpret the Constitution themselves, just as you said.

Mr. FEENEY. And finally, and I know the chair wants to get up to mark-up, as we all do, but finally, is there anything if we pass this amendment that would prohibit any American from expressing through actual speech his or her position on any given issue in the political forum today?

Mr. PARKER. Absolutely nothing. This amendment has only to do with physical desecration, not words. That's where I would differ



with Mr. Scott, with Congressman Scott. It's strictly acts, not words.

Mr. FEENEY. I thank you and yield back the balance.

Mr. CHABOT. I thank the gentleman for yielding back.

The gentleman from Virginia, Mr. Forbes, is recognized for 5 minutes.

Mr. FORBES. Thank you, Mr. Chairman. Normally, I follow the good advice from my friend from Tennessee, but in this situation, I want to take just a few minutes and tell you why I think this amendment is so important.

You know, when you hear it discussed, people love to blend apples and oranges. They love to give you red herrings that you try to chase so you don't focus on the real issue that is before us.

It just baffles me to say that you're going to refuse to pass an amendment to protect the American flag because we don't give adequate services to veterans. What we need to be doing is doing both, and we can do both.

To ask if we would prosecute actors for portraying flag burners in a play is just as ludicrous to me as saying we would prosecute actors portraying murderers in a play if they were—just as if they were murderers.

And some of the same people—I'm not talking about particular people in this room, but who would say we need to protect flag burning and obscenity are the first that say we should limit individuals in spending their money to have political speech. Can you imagine some of these same individuals, if we said an individual ought to be able to fire a cannon on his own property or fire a gun in the city limits if he wanted that as an expression of freedom of speech?

Nobody here, nobody questions that if this amendment is passed by the American people, it will be just as much a part of a Constitution as any other provision. The question, therefore, is simple. Is the American flag of such importance to the American people that their elected representatives should have the right to protect the desecration of that flag?

I believe the people should decide. I think, overwhelmingly, they would say yes, and let me tell you why I say yes. It's because of my 17-year-old son.

My 17-year-old son loves one thing in life, basketball, that's it, nothing else. He doesn't like politics, doesn't like anything else. But a week ago, I had something come in the mail where I found that he had won the number one essay in Virginia on patriotism, and I read it, and let me tell you what he said.

He said he was an ordinary teenager who talked about ordinary things. His friends talked about girls, how lousy their basketball coach was, fixing up his '81, 1981 Jeep. But then he talked about his grandfather, who was also very ordinary, he said, because when he was 19 years old, he did two things. He married his grandmother, but then he also went to a little place called Normandy, and a few weeks after the invasion when he was there, this 17-year-old boy said, "I can't imagine how you can get 19-year-old boys to run off of ships and boats and landing vehicles in the face of machine guns firing at them."

He talked about September 11, when you would walk around Washington, DC, with smoke coming up at the Pentagon, and the only thing that would really unite this country was that the American flag was still flying strongly over the Capitol and across this great city.

And then he told something else. If you look around this room and you see the veterans in here, and I don't mean to offend any of them, I want to just tell you this, though, most of the time when you look at people, you've got a frown and you've got a snarl. I mean, that's him, not me. But, he said, the one thing that will bring a tear down the eye of the most hardened veteran is the American flag and when they see that.

And he said that the thing that kept him from being ordinary, the thing that united him with his grandfather and the thing that united him with all those people who did heroic things on September 11 was when he could hold his flag up high.

And I would just suggest to all those who oppose this amendment that this is something the American people believe is worth protecting and we should pass this amendment to be able to give the Congress the right to do that. Thank you, Mr. Chairman.

Mr. CHABOT. Thank you very much. [Applause.]

Thank you, Mr. Forbes. All the Members have had an opportunity now to ask their questions, so I want to thank the panel for coming this afternoon and testifying. I think all four of you did an excellent job and we appreciate your willingness to come in and we particularly appreciate those of you who have given such—that have served your country so honorably, and thank you very much for being here.

At this time, we are going to move into the actual mark-up of this bill, so you are welcome to stick around. This should not take a terribly long period of time, but I guess our clerk will be moving down to the table down here to take up, so if you all want to move back into the audience. If anybody has to leave, they are welcome to do that, but we are going to move right into the mark-up.

[Whereupon, at 5:13 p.m., the Subcommittee proceeded to other business.]

# APPENDIX

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## MATERIAL SUBMITTED FOR THE HEARING RECORD

### PREPARED STATEMENT OF THE CITIZENS FLAG ALLIANCE

#### **What We Believe**

In 1989 the Supreme Court, in response to a flag burning by a communist, amended the Constitution by inserting flag burning in the Bill of Rights. Their decision took away a fundamental right of the American people, a right we possessed since our birth as a nation, the right to protect our flag. We believe that decision was an egregious error and distorted our Constitution. We do not believe the freedom to burn the American flag is a legacy of the freedoms bestowed on us by Madison and Jefferson and Washington and the other architects of our Constitution. To distort the work of these great men unable to defend themselves, to put flag burning side by side with pornography as protected speech is outrageous.

We believe that some elements in our society seek to amend the Constitution through the courts out of the bright light of the public square where they would surely fail. The ACLU has said they are the guardians of the Constitution and that their hope for their agenda is through the courts. We believe that our hope is in the Constitution as defined by our Founding Fathers and that we the people are the guardians of the Constitution. One judge said the Constitution is what the courts say it is! We believe the Constitution is what the Founding Fathers said it was and cannot be amended without the will of the people.

President Lincoln said: "If the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court ... the people will have ceased to be their own rulers." Abraham Lincoln also warned, "Don't interfere with any thing in the Constitution. That must be maintained, for it is the only safeguard of our liberties."

Many Americans have raised their right hand and sworn an oath to protect and defend the Constitution from all enemies both foreign and domestic. We believe that all Americans who put their right hand over their heart and recite the Pledge take that same oath. Both the oath and the pledge are taken in the presence of Old Glory to emphasize that our flag is the symbol of our Constitution. We believe that the courts have interfered with the Constitution by calling flag burning speech and that we the people must exercise our right to rule by insuring that the Court's decision is not irrevocably fixed.

We believe that legalizing flag burning, in addition to disfiguring the Constitution, also raises values issues and questions the kind of people we have been and want to be. We believe that our laws should reflect our values. Flag burning is not a value of the American people.

We believe the highest form of patriotism is service to our children and a premier worth of respect for the flag is the values it teaches our children, the values embedded in our Constitution as embodied by Old Glory. We agree with Pearl Buck who describes how precious a symbol the flag is to the treasure that is our children and how important it is to their development. She also said: "Children are our national treasure. With what measure we mete to them in their childhood, they will mete to our nation in their lifetime." We believe our children should be raised as patriots full of respect for the flag and the constitutional values it represents. How can they respect something they are free to burn?

We believe symbols are indispensable in a democracy. They have been called the natural speech of the soul. Our gratitude for the great bounty that is America is expressed through symbols: Grave stones, obelisks, walls and the greatest of all symbols, Old Glory. Symbol is from a Greek word meaning a half token which when united with its other half identified the owner. It is meant to recognize something far more elaborate than itself. That something, the other half token of the flag, is the Constitution and we the people are the owners. 9-11 reminded all Americans of what veterans have always known: the unifying, comforting and inspirational magic of Old Glory, its unique and indispensable value to our society.

Thomas Jefferson said: "Democracy is cumbersome, slow and inefficient, but in time the voice of the people will be heard and their latent wisdom will prevail." We believe that all Americans once they realize that our Constitution was never intended to include flag burning will be outraged, energized and mobilized against those who deliberately or inadvertently despoil that cherished document. We believe that if we persevere, eventually the voice of the people will be heard and our Constitution will be restored. The courts are forcing us to accept flag burning, we are not trying to force the people to love Old Glory, we are trying to force the courts to restore the truth to our Constitution.

We believe our battle for our flag is a battle for our Constitution, our concern is not those who desecrate the flag; our concern is those who desecrate our Constitution by calling flag burning speech. If we did not act on our belief, and correct the errors of the Court, we would violate our oath and our pledge, we would be cowards not worthy of the sweat and blood and tears of those who gave us our Constitution and all we have. We could not face the greatest generation, or the silent generations, we could not face our children, we could not face ourselves. This is a sacred debt to our Founders, to America's nobility our veterans, to our patriots and to our children.

#### **Fact and Fiction on the Right of the People to Protect Old Glory**

**Fiction:** Burning the American flag is protected "speech" as defined by the First Amendment to the Constitution.

**Fact:** Flag burning is not speech as defined by our Founding Fathers in the First amendment. The First Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for a redress of grievances." James Madison, who wrote the First amendment, condemned flag burning as a crime. Thomas Jefferson agreed with Madison and made clear in his writings that "speech" in the First Amendment meant the spoken word, not expression or expressive conduct of any kind. To say otherwise made press a redundancy. In fact, the words expression or expressive conduct are not in the Bill of Rights. And for good reason. Activist judges have added them to the Constitution in order to promote their own political agenda. Since our birth as a nation we the people have exercised our right to protect our flag. This right has been confirmed by every Chief Justice of the United States and Justices on 5 Courts in the last century who denied that flag burning was "speech." This fact

is also confirmed by current Constitutional experts, 70% of the Congress, the legislatures of all 50 states and three out of 4 Americans.

Fiction: The flag amendment would amend the Bill of Rights for the first time.

Fact: The Supreme Court amended the Bill of Rights in 1989 when they erroneously called flag burning protected "speech" and took away our freedom to protect our flag. And they did so without the consent of we the people, an act forbidden by the Constitution. The flag amendment is an exercise of the true ownership of we the people over our Constitution. The flag amendment restores the Bill of Rights to its intended meaning, the meaning of the founders. The flag amendment takes ownership over our flag back from the Court and returns it to the people where it belongs and where it resided since our birth as a nation. Our question to those who pose this fiction: If the Supreme Court in 1989 had voted to protect the flag, would they then have amended the Bill of Rights? Every previous Supreme Court had supported that right. As an aside, the First Amendment has clearly been amended or Blacks would still be property and neither they or women or 18 year olds would be allowed to vote.

Fiction: The flag can be protected by statute without the amendment.

Fact: The Supreme Court has made it clear that it will strike down any effort to protect the flag by statute, and did so in 1990. Lawmakers know this and have also struck down efforts by their colleagues to hide behind flag protection statutes. The fact is that the only way to protect the flag is by statute but it must come after the passage of the flag amendment. The flag amendment by itself changes nothing but requires follow on legislation to protect the flag.

Fiction: The Supreme Court is the final word on the Constitution.

Fact: The people are the final word on the Constitution. The Supreme Court has boasted that they speak before all others and has actually contended that it is important to accept their unconstitutional decisions rather than undermine their legitimacy. The ACLU has claimed that they are the enforcement arm of the Constitution. The Founders in their wisdom put Article 4 in the Constitution to protect us from such arrogance and the constitutional and cultural pirates who seek to amend the people's Constitution in the dim light of the courts, out of the bright democratic light of the public square and without the consent of the people. Article 5 is designed to ensure that the people rule. It protects us from a tyranny of a minority on the courts, or anywhere else, who attack our Constitution.

Fiction: Flag burnings are rare and not important enough to justify changing the Constitution to punish a few miscreants.

Fact: There have been hundreds of flag desecration since the Supreme Court decision and the flag amendment does not change the constitution, it restores it. In America the frequency of an evil has nothing to do with our laws against that evil. Shouting "fire" in a crowded theatre or speaking of weapons in a crowded airport are rare occurrences but we have laws against them, and we should. It is important to understand that those who would restore the right of the people to protect the flag are not concerned with punishing miscreants who desecrate the

flag, they are not the problem, the problem is to protect our Constitution from those miscreants who desecrate it by calling flag burning "speech." We are not amending the Constitution only to protect the flag; we are doing it primarily to protect the Constitution.

Fiction: If the flag is my property, I can do with it as I wish, as with any of my property.

Fact: There are so many governmental restrictions on private property that, according to the Supreme Court, one can't even formulate a general rule about private property. For instance, you can own your automobile, but how you use it is strictly regulated. Most states even require that you have periodic safety inspections, pay property taxes on it, and wear a seatbelt when operating it. The same is true for privately owned firearms and controlled drugs. You can own the lot that your home sits on, but you can't use the property for any purpose you want that doesn't comply with zoning ordinances. The same is true for U.S. currency, your own mailbox, and military uniforms and decorations. You can own a billboard, but what you can display on it is regulated. And the same is true with the flag. Justice Byron White said each flag is the property of all the people. Our society has always believed that a citizen could purchase a flag, but ownership remained with the people. And possession of a flag carried with it a responsibility or duty to treat it with dignity and respect.

Fiction: It is impossible to enforce flag protection, as it is impossible to legally define desecration or the flag.

Fact: For most of our history we have had laws defining flag desecration and our courts had no problem until the Supreme Court mis-defined flag desecration as "speech." Any 5<sup>th</sup> grade child knows the difference between an American flag and a flag embroidered bikini or toilet paper marked with a flag. For those who have trouble defining the American flag and feign concern about prosecuting those who burn bikinis embroidered with the flag or toilet paper marked with the flag, we ask if they would put toilet paper or a bikini on the coffin of a veteran, or their own coffin, or raise them from a flag pole during retreat. This is not only a non-issue it is nonsense.

Fiction: The flag symbolizes my freedom to burn it.

Fact: On the one hand they are saying the flag is a rag to be burned with impunity. And on the other hand they are saying it represents our freedoms. Can't have it both ways. The truth is our flag embodies the values embedded in our Constitution. The word symbol is from the Greek word meaning a half token which when united with its other half identified the owner. It is meant to recognize something far more elaborate than itself. The other half of the token is the Constitution owned by the people. There is nothing in the Constitution that authorizes flag burning and the people are fighting to defeat this fiction. More Medals of Honor have been awarded for flag protection than any other act. Some actually died just to keep the flag from touching the ground. Are those who propose this fiction saying that our soldiers who died on America's battlefields to keep dictators and tyrants from defiling our flag did so in order that it could be burned on the streets of America? Who would say this to our warriors? Supreme Court

justice, Felix Frankfurter said: "We live by symbols." Symbols are vital in a Democracy. How can one separate ideals from the symbols that house them? It is like separating a person from their soul. Symbols are precious in our lives and our country and all our precious symbols are protected except our most precious symbol – Old Glory.

Fiction: Dictators protect their flag; protecting our flag aligns us with dictators.

Fact: What American could ever compare Old Glory, designed by the father of our country and protected according to the will of a free people, to a Hammer and Sickle, or Swastika, protected according to the will of a despot? Madison and Jefferson believed our flag should be protected, does that align them with Hitler and Stalin. Some one said, "Under majority rule, heads are counted, under minority rule, heads are cracked." It is vital that the will of the majority rule. In a Democracy it is the wisdom of the majority that protects us from the tyranny of the minority whether the minority be dictators or those who compare the will of the majority to the will of dictators. How would one say a pledge to a dictator's flag: I pledge allegiance to the flag of the communist party and to the totalitarian government for which it stands, one dictatorship, without a God, with oppression and injustice for all.

Fiction: Patriotism cannot be forced.

Fact: The leftist elite in America are fond of finding good in conduct the majority find evil or offensive. For example, the ACLU's defense of flag desecration and pedophilic solicitation of our children on the Internet as 'free speech.' Not surprisingly, these elite also find evil in good -- patriotism for example.

*A patriot is one who loves, supports and defends ones country.* Support and defend are the operative words. Love is difficult to pin down, best known by its fruits. To understand the love of a patriot it is important to understand that sacrifice is best defined as love in action. Those who willingly sacrifice, i.e. support and defend, do so out of love. But the love of a patriot is not blind. Just as it is impossible to care for anyone and not correct them, one cannot care for America and not seek to correct its errors. We must guarantee that dissent and debate are robust but never damage or are directed against our Constitution -- the foundation of our freedoms. It is the wisdom of the people, ultimately the majority of an informed active people, which is our protection from tyranny. The will of the majority should define patriotism, not the will of an elite minority.

Country is easily defined as the people, our neighbors, the land, and our leaders. One need not love his neighbors but he may not harm them. That is against the law. One may not love the land but he may not pollute it. Is protecting our people and our land forcing patriotism? Yes it is. Is it forcing patriotism to draft citizens to give their life in war to protect and defend their country? It certainly is. Is it forcing patriotism to force our citizens to ration in time of war to support the effort? You bet it is. We may not love our leaders but we are obliged to obey their laws. Is it forcing patriotism to force obedience to the law? What are laws for if not to force the unpatriotic to act patriotic? Patriots, good citizens, don't need laws. Any person who accepts the protection and prosperity of a nation ought to be obedient to the laws of that nation and willing to support and defend it in peace and at war.

No one has a right to control what anyone thinks, believes or loves, but we have every right, indeed an obligation, to control how our citizens act. It is insane to say that a free people cannot control conduct, and that it is not patriotic to do so. It should be obvious that demanding, indeed, forcing patriotism is the bedrock of our freedom. It should also be clear that patriotism is the lifeblood of any nation. No Nation can survive if its people refuse to support and defend it.

Fiction: The flag amendment would start a slippery slope toward other amendments and restrictions on desecration of other things such as copies of the Constitution.

Fact: Laws protecting the flag existed since our birth as a nation and promoted no other amendments. Each amendment must stand on its own merit. In fact there have been over 10000 attempts to amend the Constitution and the people have allowed it only 27 times. They take this responsibility very seriously. It is important to remember the difference between a copy of the Constitution and our flag. While many would object to the burning of a copy of the Constitution, few would want a law against it. But no one would say it is OK to burn the original Constitution, which is heavily protected. The difference in burning a copy of the Constitution and a flag is that each flag is an original, there are no copies. The slippery slope that the elite really fear is that the flag amendment will be the first step by the people to rescue their Constitution from the elite in the courtrooms, the classrooms, the cloakrooms and the newsrooms and return it to the living rooms where it belongs.

#### **Prominent Americans Speak Out on Flag Protection**

*"It passes my belief that anything in the Federal Constitution bars . . . making the deliberate burning of the America flag an offense."*

—Associate Justice Hugo Black, *Street v. New York*, 1969

*"I believe that the States and the Federal Government do have power to protect the flag from acts of desecration and disgrace."*

—Chief Justice Earl Warren, *Street v. New York*, 1969

*"Burning a flag is not speech and should not fall under First Amendment protection."*

—Judge Robert Bork

*"The First Amendment protects freedom of speech, not expression, and, whereas all speech may be expression of a sort, not all expression is speech, and there is good reason why the framers of the First Amendment protected the one and not the other."*

—Walter Berns, *Making Patriots*, p. 139

*"Surely one of the high purposes of a democratic society is to legislate against conduct that is regarded as evil and profoundly offensive to the majority of people — whether it be murder, embezzlement, pollution, or flag burning..."*

—Chief Justice William H. Rehnquist, *Texas v. Johnson*, 1989



*"The American flag, then, throughout more than 200 years of our history, has come to be the visible symbol embodying our Nation. It does not represent the views of any particular political party, and it does not represent any particular political philosophy. The flag is not simply another 'idea' or 'point of view' competing for recognition in the marketplace of ideas. Millions and millions of Americans regard it with an almost mystical reverence regardless of what sort of social, political, or philosophical beliefs they may have."*

–Chief Justice William H. Rehnquist, *Texas v. Johnson*, 1989

*"The First Amendment affords no shield to Goguen's conduct."* (Goguen desecrated a flag.)

–Justice Harry A. Blackmun joined by Chief Justice Warren Earl Burger, *Smith v. Goguen*, 1974

*"Our Constitution was not written in the sands to be washed away by each successive wave of new judges blown in by each successive political wind."*

–Associate Justice Hugo Black, *Street v. New York*, 1969

*"In my considered judgment, sanctioning the public desecration of the flag will tarnish its value — both for those who cherish the ideals for which it waves and for those who desire to don the robes of martyrdom by burning it. That tarnish is not justified by the trivial burden on free expression occasioned by requiring that an available, alternative mode of expression — including uttering words critical of the flag... be employed."*

–Associate Justice John Paul Stevens, *Texas v. Johnson*, 1989

*"Love both of the common country and the State will diminish in proportion as respect for the flag is weakened. Therefore a State will be wanting in care for the well being of its people if it ignores the fact that they regard the flag as a symbol of their country's power and prestige, and will be impatient if any disrespect is shown towards it."*

–Supreme Court Justice John Harlan, *Halter v. Nebraska*, 1907

*"Burning and destruction of the flag is not speech. It is an act. An act that inflicts insult — insult that strikes at the very core of who we are as Americans and why so many of us fought, and many died, for this country. No, this is not a debate about free speech. Our flag stands for free speech and always will."*

–US Rep. John Murtha (D-PA)

*"Flag burning is not free speech. It is an act of hatred and nihilism. It is not a call for reform. It is a disgrace. The right to dissent does not include the right to desecrate. To desecrate the flag crosses a line of ugliness."*

–US Rep. Chris Smith (R-NJ)

*"The Supreme Court made a mistake, is not absolute and we should never kow-tow to any other branch of government regardless of their decision"*

–US Rep. Bill Pascrell (D-NJ)

*"I regard legal protections for our flag as an absolute necessity and a matter of critical importance to our nation. The American flag, far from being a mere symbol or a piece of cloth, is an embodiment of our hopes, freedoms and unity. The flag is our national identity."*

–General Norman Schwarzkopf (USA-Ret.), in a letter to Sen. John Edwards (D-NC), et al, April 1999

*"Speech is when you talk."*

–Tommy Lasorda

*"We are told that the freedom of speech includes the freedom to desecrate the flag. But setting a flag afire is no more speech than vandalizing a cemetery, or scrawling slogans on a church or synagogue, or spray-painting a national monument – all of which are acts properly forbidden by the laws of a civilized country. Not to mention simple public decency." Even if no flag were ever burned, or no cemetery or church ever defaced, laws against such acts would be proper, and should be constitutional. Because the law is a great teacher, one thing it needs to teach in a less-and-less civil society is a little respect."*

–Paul Greenberg, Pulitzer Prize winning journalist

*"This flag means more than association and reward. It is the symbol of our national unity, our national endeavor, our national aspiration. It tells you of the struggle for independence, of union preserved, of liberty and union one and inseparable, of the sacrifices of brave men and women to whom the ideals and honor of this nation have been dearer than life."*

–Chief Justice Charles Evans Hughes, 1916

*"The flag is a national property, the property of all the people."*

–Supreme Court Justice Byron White

Abraham Lincoln once asked: *How many legs does a dog have if you call its tail a leg? The answer is still 4.* The Supreme Court counted the tail when it said flag burning is speech.

*"Don't interfere with anything in the Constitution. That must be maintained, for it is the only safeguard of our liberties."*

–Abraham Lincoln

*"If the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court ... the people will have ceased to be their own rulers."*

–Abraham Lincoln

The CFA believes the people, not the courts should rule.

*"Guard against the fraudulent usurpation of our flag; an abuse which brings so much embarrassment and loss on the genuine citizen, and so much danger to the nation of being involved in war, that no endeavor should be spared to detect and suppress it."*

–Thomas Jefferson, Message to Congress, December 8, 1801

*"It is universally admitted that a well-instructed people alone can be permanently free." Any one who says burning the American flag is speech is not properly instructing our children."*  
 -James Madison

*"The flag is the embodiment, not of sentiment but of history. It represents the experiences made by men and women, the experiences of those who do and live under that flag."*  
 -President Woodrow Wilson, Flag Day, June 14, 1915

*"I don't believe destroying the American flag should be protected as freedom of speech and I supported efforts to let states ban flag burning as we did in Arkansas."*  
 -Former President Bill Clinton Note: He changed his mind after becoming president.

*"I think he could defend it at a bar association meeting, but not before real people."*  
 -Senator Bob Dole, when asked how a member of Congress could defend a vote against the flag.

*"I never discussed the Constitution much, and I never made many speeches upon it, but I have done a great deal of fighting for it."*  
 -General Phil Sheridan  
 The CFA is fighting for the Constitution through the flag amendment.

